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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206–AJ51

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to aid agencies and employees responding to the ''National Emergency by Reason of Certain Terrorist Attacks'' on the World Trade Center and the Pentagon. The regulations provide that employees who forfeit excess annual leave because of their work to support the Nation during this national emergency are deemed to have scheduled their excess annual leave in advance. Such employees are entitled to restoration of their annual leave under these regulations.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–4264, or e-mail: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2001, President Bush declared a ''National Emergency by Reason of Certain Terrorist Attacks'' on the World Trade Center and the Pentagon. On November 2, 2001, the Office of Personnel Management (OPM) published interim regulations (66 FR 5557) to provide relief to Federal employees who otherwise would have forfeited excess annual leave at the end of the leave year because of their involvement in efforts connected with the national emergency. The interim regulations became effective on December 3, 2001. Many agencies are involved in activities vital to our Nation as a result of the unprecedented events of September 11, 2001, the efforts toward recovery and response, and the continuing threat of further attacks on the United States. As a result, many Federal employees involved in these activities were unable to schedule and use excess annual leave and would have forfeited that leave at the end of the leave year. The interim regulations simplified the restoration of these employees' forfeited annual leave and imposed relaxed time limitations for using restored annual leave.

The 60-day comment period ended on January 2, 2002. We received no formal comments from either agencies or individuals. In informal comments, agency representatives expressed their satisfaction with the regulations. As a result, we believe no changes are necessary in the interim regulations. Therefore, we are adopting as final the interim rule providing that excess annual leave forfeited by employees who were unable to schedule and use their leave due to their involvement in national emergency efforts is deemed to have been scheduled in advance and therefore eligible for restoration.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, under the authority of 5 U.S.C. 6304(d)(2), the Office of Personnel Management adopts the interim regulations amending subpart C of 5 CFR part 630, published at 66 FR 55557 on November 2, 2001, as final.

[FR Doc. 02–5063 Filed 3–1–02; 8:45 am]

BILLING CODE 6325–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB93

Loan Policies and Operations; Definitions; Loan Purchases and Sales; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 614 and 619 on January 10, 2002 (67 FR 1281). This final rule will enable Farm Credit System (FCS or System) institutions to better use existing statutory authority for loan participations by eliminating unnecessary regulatory restrictions that may have impeded effective participation relationships between System institutions and non-System lenders. We believe that these regulatory changes will improve the risk management capabilities of both System and non-System lenders and thereby, enhance the availability of reliable and competitive credit for agriculture and rural America. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 2002.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614 and 619 published on January 10, 2002 (67 FR 1281) is effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 27, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–5093 Filed 3–1–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–39–AD; Amendment 39–12668; AD 2002–04–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines, that currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action modifies the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This amendment is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date April 8, 2002.

ADDRESSES: The information referenced in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding (AD) 2000–08–10, Amendment 39–11696 (65 FR 21642, April 24, 2000), that is applicable to General Electric GE90 series turbofan engines was published in the **Federal Register** on October 10, 2001 (66 FR 51607). That action proposed to modifiy the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11696 (65 FR 21642, April 24, 2000), and by adding a new airworthiness directive, Amendment 39–12668 to read as follows:

AD 2002–04–11 General Electric Company: Docket No. 98–ANE–39–AD. Supersedes AD 2000–08–10, Amendment 39–11696.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B/ –77B/ –85B/ –90B/ –94B series turbofan engines. These engines are installed on but not limited to Boeing 777 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part no. (P/N)	Inspect per engine manual chapter
For GE90 Engines:		

Part nomenclature	Part no. (P/N)	Inspect per engine manual chapter
HPCR Disk, Stage 1	All	72–31–05–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–05–230–051), and 72–31–05–200–001–001 Eddy Current Inspection of the Bore, and 72–31–05–200–001–001 Eddy Current Inspection of the Dovetail Slots.
HPCR Spool, Stage 2–6	All	72–31–06–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–06–230–051), and 72–31–06–200–001–001 Eddy Current Inspection of the S2 Dovetail Slots.
HPCR, Disk, Stage 7	All	72–31–07–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–07–230–051), and 72–31–07–200–001–001 Eddy Current Inspection (subtask 72–31–07–250–051 or 72–31–07–230–052 or 72–31–07–230–053.
HPCR Spool, Stage 8–10.	All	72–31–08–200–001–001 Fluorescent Penetrant Inspection and 72–31–08–800–001 Eddy Current Inspection of the stage 8–9 inertia weld.
HPCR Seal, Compressor Discharge Pressure.	All	72–31–09–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–09–230–051), and 72–31–09–200–001–001 Eddy Current Inspection of the Boltholes.
HPCR Ring, Tube Supporter.	All	72–31–10–200–001–001 Fluorescent Penetrant Inspection.
HPTR, Interstage Seal ..	All	72–53–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–53–03–230–053), and 72–53–03–200–001–001 Eddy Current Inspection of the Bore.
Fan Disk, Stage 1	All	72–21–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–21–03–230–051), and 72–21–03–200–001–001 Eddy Current of the bore, and 72–21–03–200–001–001 Ultrasonic Inspection of Dovetail Slots.
HPTR Disk, Stage 1	All	72–53–02–200–001–002 Fluorescent Penetrant Inspection (subtask 72–53–02–160–051), and 72–53–02–200–001–002 Eddy Current Inspection of the Bore.
HPTR Disk, Stage 2	All	72–53–04–200–001–004 Fluorescent Penetrant Inspection (subtask 72–53–04–230–052), and 72–53–04–200–001–004 Eddy Current Inspection of the Bore.
LPTR Cone Shaft	All	72–56–07–200–001–001 Fluorescent Penetrant Inspection.
LPTR Fan Mid Shaft	All	72–58–01–200–001–001 Magnetic Particle Inspection.
LPTR Disk, Stage 1	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 2	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 3	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 4	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 5	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 6	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
Fan Shaft, Forward	All	72–22–01–200–001–001 Fluorescent Penetrant Inspection.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the ICA and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however,

the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Effective Date

(f) This amendment becomes effective on April 8, 2002.

Issued in Burlington, Massachusetts, on February 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–5003 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040

Change in the Removal of the Office of Management and Budget (OMB) Control Numbers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the removal of OMB control numbers. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040 to reflect a change in the removal of the outdated OMB control numbers. We no longer need to publish OMB control numbers in the CFR, because they are now displayed in a separate **Federal Register** notice announcing OMB approval for the collection of information.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 680

Biologics, Blood, Reporting and recordkeeping requirements.

21 CFR Part 720

Confidential business information, Cosmetics.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

21 CFR Part 1040

Electronic products, Labeling, Lasers, Medical devices, Radiation protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040 are amended as follows:

PART 56—INSTITUTIONAL REVIEW BOARDS

1. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 56.108 [Amended]

2. In § 56.108 *IRB functions and operations*, remove the parenthetical phrase at the end of the section.

§ 56.115 [Amended]

3. In § 56.115 *IRB records*, remove the parenthetical phrase at the end of the section.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

4. The authority citation for 21 CFR part 58 continues to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

§ 58.35 [Amended]

5. In § 58.35 *Quality assurance unit*, remove the parenthetical phrase at the end of the section.

§ 58.63 [Amended]

6. In § 58.63 *Maintenance and calibration of equipment*, remove the parenthetical phrase at the end of the section.

§ 58.90 [Amended]

7. In § 58.90 *Animal care*, remove the parenthetical phrase at the end of the section.

§ 58.105 [Amended]

8. In § 58.105 *Test and control article characterization*, remove the parenthetical phrase at the end of the section.

§ 58.120 [Amended]

9. In § 58.120 *Protocol*, remove the parenthetical phrase at the end of the section.

§ 58.130 [Amended]

10. In § 58.130 *Conduct of a nonclinical laboratory study*, remove the parenthetical phrase at the end of the section.

§ 58.190 [Amended]

11. In § 58.190 *Storage and retrieval of records and data*, remove the parenthetical phrase at the end of the section.

PART 60—PATENT TERM RESTORATION

12. The authority citation for 21 CFR part 60 continues to read as follows:

Authority: 21 U.S.C. 348, 355, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

§ 60.24 [Amended]

13. In § 60.24 *Revision of regulatory review period determinations*, remove the parenthetical phrase at the end of the section.

§ 60.30 [Amended]

14. In § 60.30 *Filing, format, and content of petitions*, remove the parenthetical phrase at the end of the section.

§ 60.40 [Amended]

15. In § 60.40 *Request for hearing*, remove the parenthetical phrase at the end of the section.

PART 101—FOOD LABELING

16. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.69 [Amended]

17. In § 101.69 *Petitions for nutrient content claims*, remove the parenthetical phrase at the end of the section.

PART 107—INFANT FORMULA

18. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

§ 107.10 [Amended]

19. In § 107.10 *Nutrient information*, remove the parenthetical phrase at the end of the section.

§ 107.20 [Amended]

20. In § 107.20 *Directions for use*, remove the parenthetical phrase at the end of the section.

§ 107.50 [Amended]

21. In § 107.50 *Terms and conditions*, remove the parenthetical phrase at the end of the section.

§ 107.280 [Amended]

22. In § 107.280 *Records retention*, remove the parenthetical phrase at the end of the section.

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

23. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

§ 179.25 [Amended]

24. In § 179.25 *General provisions for food irradiation*, remove the parenthetical phrase at the end of the section.

PART 310—NEW DRUGS

25. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.305 [Amended]

26. In § 310.305 *Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications*, remove the parenthetical phrase at the end of the section.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

27. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.7 [Amended]

28. In § 312.7 *Promotion and charging for investigational drugs*, remove the parenthetical phrase at the end of the section.

§ 312.10 [Amended]

29. In § 312.10 *Waivers*, remove the parenthetical phrase at the end of the section.

§ 312.23 [Amended]

30. In § 312.23 *IND content and format*, remove the parenthetical phrase at the end of the section.

§ 312.30 [Amended]

31. In § 312.30 *Protocol amendments*, remove the parenthetical phrase at the end of the section.

§ 312.31 [Amended]

32. In § 312.31 *Information amendments*, remove the parenthetical phrase at the end of the section.

§ 312.32 [Amended]

33. In § 312.32 *IND safety reports*, remove the parenthetical phrase at the end of the section.

§ 312.33 [Amended]

34. In § 312.33 *Annual reports*, remove the parenthetical phrase at the end of the section.

§ 312.35 [Amended]

35. In § 312.35 *Submissions for treatment use*, remove the parenthetical phrase at the end of the section.

§ 312.36 [Amended]

36. In § 312.36 *Emergency use of an investigational new drug*, remove the parenthetical phrase at the end of the section.

§ 312.38 [Amended]

37. In § 312.38 *Withdrawal of an IND*, remove the parenthetical phrase at the end of the section.

§ 312.41 [Amended]

38. In § 312.41 *Comment and advice on an IND*, remove the parenthetical phrase at the end of the section.

§ 312.44 [Amended]

39. In § 312.44 *Termination*, remove the parenthetical phrase at the end of the section.

§ 312.45 [Amended]

40. In § 312.45 *Inactive status*, remove the parenthetical phrase at the end of the section.

§ 312.47 [Amended]

41. In § 312.47 *Meetings*, remove the parenthetical phrase at the end of the section.

§ 312.53 [Amended]

42. In § 312.53 *Selecting investigators and monitors*, remove the parenthetical phrase at the end of the section.

§ 312.55 [Amended]

43. In § 312.55 *Informing investigators*, remove the parenthetical phrase at the end of the section.

§ 312.56 [Amended]

44. In § 312.56 *Review of ongoing investigations*, remove the parenthetical phrase at the end of the section.

§ 312.57 [Amended]

45. In § 312.57 *Recordkeeping and record retention*, remove the parenthetical phrase at the end of the section.

§ 312.59 [Amended]

46. In § 312.59 *Disposition of unused supply of investigational drug*, remove the parenthetical phrase at the end of the section.

§ 312.62 [Amended]

47. In § 312.62 *Investigator recordkeeping and record retention*, remove the parenthetical phrase at the end of the section.

§ 312.64 [Amended]

48. In § 312.64 *Investigator reports*, remove the parenthetical phrase at the end of the section.

§ 312.66 [Amended]

49. In § 312.66 *Assurance of IRB review*, remove the parenthetical phrase at the end of the section.

§ 312.70 [Amended]

50. In § 312.70 *Disqualification of a clinical investigator*, remove the parenthetical phrase at the end of the section.

§ 312.110 [Amended]

51. In § 312.110 *Import and export requirements*, remove the parenthetical phrase at the end of the section.

§ 312.120 [Amended]

52. In § 312.120 *Foreign clinical studies not conducted under an IND*, remove the parenthetical phrase at the end of the section.

§ 312.140 [Amended]

53. In § 312.140 *Address for correspondence*, remove the parenthetical phrase at the end of the section.

§ 312.160 [Amended]

54. In § 312.160 *Drugs for investigational use in laboratory research animals or in vitro tests*, remove the parenthetical phrase at the end of the section.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

55. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.50 [Amended]

56. In § 314.50 *Content and format of an application*, remove the parenthetical phrase at the end of the section.

§ 314.70 [Amended]

57. In § 314.70 *Supplements and other changes to an approved application*, remove the parenthetical phrase at the end of the section.

§ 314.71 [Amended]

58. In § 314.71 *Procedures for submission of a supplement to an approved application*, remove the parenthetical phrase at the end of the section.

§ 314.72 [Amended]

59. In § 314.72 *Changes in ownership of an application*, remove the parenthetical phrase at the end of the section.

§ 314.80 [Amended]

60. In § 314.80 *Postmarketing reporting of adverse drug experiences*, remove the parenthetical phrase at the end of the section.

§ 314.90 [Amended]

61. In § 314.90 *Waivers*, remove the parenthetical phrase at the end of the section

§ 314.126 [Amended]

62. In § 314.126 *Adequate and well-controlled studies*, remove the parenthetical phrase at the end of the section.

§ 314.200 [Amended]

63. In § 314.200 *Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing*, remove the parenthetical phrase at the end of the section.

§ 314.420 [Amended]

64. In § 314.420 *Drug master files*, remove the parenthetical phrase at the end of the section.

PART 510—NEW ANIMAL DRUGS

65. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.455 [Amended]

66. In § 510.455 *New animal drug requirements regarding free-choice administration in feeds*, remove the parenthetical phrase at the end of the section.

PART 514—NEW ANIMAL DRUG APPLICATIONS

67. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

§ 514.1 [Amended]

68. In § 514.1 *Applications*, remove the parenthetical phrase at the end of the section.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

69. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

§ 606.170 [Amended]

70. In § 606.170 *Adverse reaction file*, remove the parenthetical phrase at the end of the section.

PART 610—GENERAL BIOLOGICAL PRODUCTS

71. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.2 [Amended]

72. In § 610.2 *Requests for samples and protocols; official release*, remove the parenthetical phrase at the end of the section

§ 610.12 [Amended]

73. In § 610.12 *Sterility*, remove the parenthetical phrase at the end of the section.

§ 610.13 [Amended]

74. In § 610.13 *Purity*, remove the parenthetical phrase at the end of the section.

§ 610.18 [Amended]

75. In § 610.18 *Cultures*, remove the parenthetical phrase at the end of the section.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

76. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.2 [Amended]

77. In § 640.2 *General requirements*, remove the parenthetical phrase at the end of the section

§ 640.72 [Amended]

78. In § 640.72 *Records*, remove the parenthetical phrase at the end of the section.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

79. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 660.21 [Amended]

80. In § 660.21 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.22 [Amended]

81. In § 660.22 *Potency requirements with reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.25 [Amended]

82. In § 660.25 *Potency tests without reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.26 [Amended]

83. In § 660.26 *Specificity tests and avidity tests*, remove the parenthetical phrase at the end of the section.

§ 660.28 [Amended]

84. In § 660.28 *Labeling*, remove the parenthetical phrase at the end of the section.

§ 660.34 [Amended]

85. In § 660.34 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.35 [Amended]

86. In § 660.35 *Labeling*, remove the parenthetical phrase at the end of the section.

§ 660.36 [Amended]

87. In § 660.36 *Samples and protocols*, remove the parenthetical phrase at the end of the section.

§ 660.51 [Amended]

88. In § 660.51 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.52 [Amended]

89. In § 660.52 *Reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.53 [Amended]

90. In § 660.53 *Controls for serological procedures*, remove the parenthetical phrase at the end of the section.

§ 660.54 [Amended]

91. In § 660.54 *Potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties*, remove the parenthetical phrase at the end of the section.

§ 660.55 [Amended]

92. In § 660.55 *Labeling*, remove the parenthetical phrase at the end of the section.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

93. The authority citation for 21 CFR part 680 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 680.1 [Amended]

94. In § 680.1 *Allergenic products*, remove the parenthetical phrase at the end of the section.

§ 680.2 [Amended]

95. In § 680.2 *Manufacture of allergenic products*, remove the parenthetical phrase in paragraph (f) of this section.

§ 680.3 [Amended]

96. In § 680.3 *Tests*, remove the parenthetical phrase at the end of the section.

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

97. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

§ 720.6 [Amended]

98. In § 720.6 *Amendments to statement*, remove the parenthetical phrase at the end of the section.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

99. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

§ 814.20 [Amended]

100. In § 814.20 *Application*, remove the parenthetical phrase at the end of the section.

§ 814.39 [Amended]

101. In § 814.39 *PMA supplements*, remove the parenthetical phrase at the end of the section.

§ 814.84 [Amended]

102. In § 814.84 *Reports*, remove the parenthetical phrase at the end of the section.

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

103. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

§ 1020.33 [Amended]

104. In § 1020.33 *Computed tomography (CT) equipment*, remove the parenthetical phrase at the end of the section.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

105. The authority citation for 21 CFR part 1040 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

§ 1040.20 [Amended]

106. In § 1040.20 *Sunlamp products and ultraviolet lamps intended for use in sunlamp products*, remove the

parenthetical phrase at the end of the section.

Dated: February 20, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4962 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Pittsburgh-02–001

RIN 2115–AA97

Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all water extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect the PPG Plant in Natrium, West Virginia from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the PPG Plant. Entry of vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

DATES: This rule is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh-02–001] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The catastrophic nature of, and resulting devastation from, the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington D.C., makes this rulemaking necessary for the protection of national security interests. National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To enhance that security the Captain of the Port, Pittsburgh is establishing a temporary security zone.

This security zone includes all water extending 200 feet from the shoreline of the left descending bank on the Ohio River beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect the public, facilities, and surrounding area from possible acts of terrorism at the PPG Plant. All vessels and persons are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone and vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Brian Smith, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644–5808.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–009 is added to read as follows:

§ 165.T08–009 Security Zone; Ohio River Miles 119.0 to 119.8, Natrium, West Virginia.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 119.0 and ending at mile marker 119.8.

(b) *Effective date.* This section is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

(c) *Authority.* The authority for this section is 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–1(g), and 49 CFR 1.46.

(d) *Regulations.* (1) Entry into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (412) 644–5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 8, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 02–5090 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Pittsburgh–02–002

RIN 2115–AA97

Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all water extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the First Energy Nuclear Power Plant in Shippingport, Pennsylvania from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the First Energy Nuclear Power Plant. Entry of vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

DATES: This rule is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh–02–002] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists

for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The catastrophic nature of, and resulting devastation from, the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington DC, makes this rulemaking necessary for the protection of national security interests. National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To enhance that security the Captain of the Port, Pittsburgh is establishing a temporary security zone.

This security zone includes all water extending 200 feet from the shoreline of the left descending bank on the Ohio River beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the public, facilities, and surrounding area from possible acts of terrorism at the First Energy Nuclear Power Plant. All vessels are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone and vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Brian Smith, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644–5808.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–010 is added to read as follows:

§ 165.T08–010 Security Zone; Ohio River Miles 34.6 to 35.1, Shippingport, Pennsylvania.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 34.6 and ending at mile marker 35.1.

(b) *Effective date.* This section is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

(c) *Authority.* The authority for this section is 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–1(g), and 49 CFR 1.46.

(d) *Regulations.* (1) Entry into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (412) 644–5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 8, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 02–5091 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Iowa 0127–1127a; FRL–7151–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision approves numerous rules adopted by the state in 1998, 1999, and 2001. This includes rules pertaining to definitions, compliance, permits for new or existing stationary sources, voluntary operating permits, permits by rule, and testing and sampling methods.

These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards, ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revisions according to section 110.

DATES: This direct final rule will be effective May 3, 2002 unless EPA receives adverse comments by April 3, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are

maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Action?

On August 21, 2000, February 7, 2001, July 23, 2001, and December 27, 2001, we received requests from the Iowa Department of Natural Resources (IDNR) to amend the SIP. The state requested that we approve amendments made to portions of the following rules:

Rule 567–20, Scope of Title-Definitions-Forms-Rule of Practice,
Rule 567–21, Compliance,
Rule 567–22, Controlling Pollution,
Rule 567–23, Emission Standards for Contaminants, and
Rule 567–25, Measurement of Emissions.

The rules were amended to accomplish a number of changes. For the most part, these amendments are primarily minor changes in wording to rules which are already in the approved SIP. In some instances clarifications and corrections were made. In other instances the rule is updated to align it with changes made in the Federal rule. Finally, updates to a number of references to Federal citations were made. A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and is available from the EPA contact above.

A few of the rule revisions which may be of interest, however, are mentioned here. Subrule 22.1(1) and paragraph 22.1(1)''c'' were amended to allow a true, minor source to begin construction prior to obtaining a permit, subject to certain conditions. Subrule 22.1(2) added additional information which incorporates a notification to IDNR upon request for certain types of emission units falling under a construction permit exemption. This recordkeeping process will ensure that IDNR has access to information on equipment for which certain exemptions are being claimed.

Paragraph 22.1(2)''i'' was amended to clarify requirements for those facilities wanting to get credit for emission reductions made as a result of the installation of control equipment. Subrule 22.3(8) adds a provision which requires that IDNR be notified when the ownership of equipment covered by a construction permit changes. This provision will require facilities to keep IDNR informed of who owns equipment covered by a construction permit. Paragraph 22.8(1)''e'' was amended to clarify the certification requirement for obtaining a permit by rule for spray booths. Paragraph 22.300(4)''b'' was amended to provide clarification to the definition of *de minimis* emissions and to the record keeping requirements for stationary sources with *de minimis* emissions.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—IOWA

2. In § 52.820 the table in paragraph (c) is amended:

a. Under Chapter 20 by revising the entry for ''567–20.2''.

b. Under Chapter 21 by revising the entry for ''567–21.2''.

c. Under Chapter 22 by revising the entries for ''567–22.1'', ''567–22.3'', ''567–22.4'', ''567–22.5'', ''567–22.8'', ''567–22.201'', ''567–22.203'', and ''567–22.300''.

d. Under Chapter 23 by revising the entries for ''567–23.3'' and ''567–23.4''.

e. Under Chapter 25 by revising the entry for ''567–25.1''.

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
*	* * *	*	*	* *
567–20.2 ..	Definitions	7/21/99	March 4, 2002 and FR cite.	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source, are not SIP approved.
*	* * *	*	*	* *
Chapter 21—Compliance				
*	* * *	*	*	* *
567–21.2 ..	Variances	7/21/99	March 4, 2002 and FR cite.	
*	* * *	*	*	* *
Chapter 22—Controlling Pollution				
567–22.1 ..	Permits Required for New or Existing Stationary Sources.	3/14/01	March 4, 2002 and FR cite.	Subrules 22.1(2), 22.1(2) ''g,'' 22.1(2) ''i'' have a state effective date of 5/23/01/
*	* * *	*	*	* *
567–22.3 ..	Issuing Permits	3/14/01	March 4, 2002 and FR cite.	Subrule 22.3(6) is not SIP approved.
567–22.4 ..	Special Requirements for Major Stationary Sources Located in areas Designated Attainment or Unclassified (PSD).	3/14/01	March 4, 2002 and FR cite.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
567–22.5 ..	Special Requirements for Nonattainment Areas	7/21/99	March 4, 2002 and FR cite.	
567–22.8 ..	Permit by Rule	7/21/99	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.201.	Eligibility for Voluntary Operating Permits	7/21/99	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.203.	Voluntary Operating Permit Applicatioins	10/14/98	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.300.	Operating Permit by Rule for Small Sources	7/21/99	March 4, 2002 and FR cite.	Subrule 22.300(7)''c'' has a state effective date of 10/14/98.
Chapter 23—Emission Standards for Contaminants				
*	* * * *	*	*	*
567–23.3 ..	Specific Contaminants	7/21/99	March 4, 2002 and FR cite.	Subrule 23.3(2) has a state effective date of 5/13/98. Subrule 23.3(3)''d'' is not SIP approved.
567–23.4 ..	Specific processes	7/21/99	March 4, 2002 and FR cite.	Subrule 23.4(10) is not SIP approved.
*	* * * *	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1 ..	Testing and Sampling of New and Existing Equipment..	3/14/01	March 4, 2002 and FR cite.	
*	* * * *	*	*	*

* * * * *

[FR Doc. 02–4936 Filed 3–1–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 0126–1126a; FRL–7151–9]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Iowa Operating Permits Program for air pollution control. This revision approves numerous rule revisions adopted by the state since the initial approval of its program in 1995. Rule revisions approved in this action include rules pertaining to issuing permits, Title V operating permits, voluntary operating permits, and operating permits by rule for small sources.

These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revisions.

DATES: This rule is effective May 3, 2002, without further notice, unless EPA receives adverse comment by April 3, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittals are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

This section provides additional information by addressing the following questions:

What Is the Part 70 Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets certain Federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Does Federal Approval of a State Operating Permits Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved operating permits program is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

We have requested that each permitting authority periodically submit any revised part 70 rules to us for approval as a revision to their approved part 70 program. The purpose for this is to ensure that the state program and Federally-approved program are consistent, current and Federally enforceable.

Consequently, the state of Iowa has requested that we approve a number of revisions to its part 70 rules. In letters dated August 7, 2000, January 29, 2001, and July 18, 2001, the state requested that we approve various revisions to rules 567–22.100 through 567–22.116, 567–22.201, 567–22.203, and 567–22.300.

The rules were amended to accomplish a number of changes. Some amendments were primarily minor changes in wording to rules which were already in the approved program. In some instances clarifications and corrections were made. In other instances the rules were updated to align them with changes made in the Federal rules. Finally, updates to a number of references to Federal citations were made. A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here.

Rule 22.100, definition of ''major source,'' paragraph ''2'': Language added so that fugitive emissions of HAPs are considered in determining whether a stationary source is a major source.

Rule 22.103(2): Language added ozone to the list of insignificant activities that must be included in the Title V operating permit application, and provides clarification by striking reference to the Title V fee, which is not being required for insignificant activities.

Rule 22.106(1): Deleted prior language and added clarifying language as to when the fee is to be paid, what the fee is based on, and the schedule for establishing the fee and the process for establishing the fee.

Rule 22.106(6): Adds a new subrule which exempts sources from the requirement to pay the Title V permit fee until such time as the sources are required to apply for the Title V permits.

Rule 22.106(7): Rule was amended by adopting a new subrule 22.106(7) which added language to clarify that no Title V fee will be calculated for insignificant activities.

Rule 22.300(3)(b) and (c): Rule was amended by removing the eligibility deadline of December 9, 1999, for operating permit by rule for small sources for those sources subject to sections 111 and 112 of the CAA. Previously, these sources had five years from December 9, 1999, to obtain the operating permit by rule.

Rule 22.300(4)(b): Added clarification to the definition of *de minimis* emissions and to the recordkeeping requirements for stationary sources with *de minimis* emissions.

Rule 22.300(7): Rule was amended to provide clarification to the recordkeeping requirement for *non-de minimis* sources.

Have the Requirements for Approval of a Revision to the Operating Permits Program Been Met?

Our review of the material submitted indicates that the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

We are approving revisions to the Iowa part 70 operating permits program. We are processing this action as a final action because the revisions make

routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the Federal government established in the CAA. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permits program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to Part 70 is amended by adding under ''Iowa'' paragraph (c) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(c) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100 through 567–22.116 and 567–22.300 on August 7, 2000, rules 567–22.201, 567–22.203, and 567–22.300 (except 22.300(7)(''c'')) on January 29, 2001, and 567–22.100 and 567–22.106 on July 18, 2001. These revisions to the Iowa program are approved effective May 3, 2002.

* * * * *

[FR Doc. 02–4938 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[FCC 01–387]

Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this *Report and Order,* the Commission resolves certain issues

raised in the *Second Further Notice of Proposed Rule Making (Second Further NPRM)* in WT Docket No. 97–112 and CC Docket No. 90–6, and adopts a bifurcated approach to cellular licensing in the Gulf of Mexico Service Area (''GMSA'') based on the differences between the deployment of cellular service in the Eastern Gulf and the Western Gulf. In the Eastern Gulf, the Commission establishes a Coastal Zone in which its cellular unserved area licensing rules will apply. Cellular service in the Western Gulf will continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. The Commission establishes the Gulf of Mexico Exclusive Zone in which the Gulf carriers will be exclusively licensed to operate. Further, the Commission concludes that the issue of establishing new Gulf licensing areas for non-cellular services should be addressed on a service-by-service basis. The Commission also clarifies the rights of land-based licensees in those services in which it has not provided for licensing of carriers in the Gulf. The Commission concludes that these actions will spur the development of reliable service where needed, minimize disturbance to current operations and contractual arrangements, and help to resolve coverage conflicts.

DATES: Effective May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Noel, Michael Ferrante, or Linda Chang at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order,* adopted December 21, 2001, and released January 15, 2002, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of Report and Order

I. Background

1. *Initial Licensing of Cellular Service in the Gulf of Mexico.* The Commission first authorized the provision of cellular service in the Gulf of Mexico in 1983 and licensed two carriers to serve the region in 1985. The original rules allowed the Gulf carriers to operate throughout the GMSA, which extends to the shoreline and, therefore, includes coastal water areas. However, the Gulf carriers were limited to placing their transmitter sites on offshore platforms (predominantly oil and gas drilling platforms) and were prohibited from using land-based transmitters to serve the GMSA. In addition, in order to prevent interference to adjacent land-based cellular systems, the Gulf carriers were required to limit transmitter power from offshore sites to the extent necessary to avoid extending their service area contours over land.

2. The presence of the Gulf licensees placed similar limitations on land-based cellular operations in adjacent coastal areas. Land-based carriers were prohibited by the Commission's rules from extending their service area contours into the GMSA, *i.e.,* beyond the mean high-tide line that defined the service area border, except for *de minimis* extensions. As a result, land-based carriers seeking to cover shore areas, *e.g.,* to provide comprehensive service along coastal roads and in coastal communities, were unable to site transmitters close to the shoreline without incurring substantial engineering costs to avoid their signals being transmitted over water.

3. From the outset, these rules have caused conflict between the Gulf carriers and adjacent land carriers regarding the provision of service in the Gulf coastal region. Because offshore drilling has not occurred in the Eastern Gulf, these conflicts have occurred almost exclusively in the Western Gulf, particularly in areas where offshore and onshore sites were in close proximity. In some instances, the requirement to avoid encroachment into adjacent service areas has led to gaps in coverage, both on land and over water, because neither Gulf-based nor land-based carriers could extend coverage into these areas without capture of each other's subscriber traffic. In other instances, disputes have arisen over whether particular Gulf or land carriers were improperly extending coverage and capturing subscribers in the adjacent land or Gulf service area.

4. *Unserved Area Rules.* In 1993, the Commission adopted the *Unserved Area Second Report and Order,* 57 FR 13646 (April 17, 1992), which established unserved area licensing rules for land-based cellular service. Under these rules, the Cellular Geographic Service Area (''CGSA'') of each cellular system was redefined as the composite contour created by the actual service areas of all cells in the system. See 47 CFR 22.911. The CGSA is the area in which carriers are entitled to protection from interference and from capture of subscriber traffic by adjacent carriers. In addition, areas not within any carrier's CGSA were subject to reclamation by the Commission and licensing as unserved areas. In the *Unserved Area Third Report and Order,* 57 FR 53446 (November 10, 1992), the Commission extended these rules to cellular service in the Gulf. See Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90–6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration,* 57 FR 53446 (November 10, 1992). As a result, the Gulf carriers' service areas no longer comprised the entire GMSA, but were now limited to areas in the Gulf that received actual coverage from an offshore platform-based cell site. This caused portions of the Gulf that were outside the coverage area of any offshore cell site to be redefined as ''unserved'' areas, which could not be served by the Gulf carriers without further application and licensing.

5. *PetroCom Remand.* In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. *See Petroleum Communications, Inc.* v. *FCC,* 22 F.3d 1164 (D.C. Cir. 1994) *(PetroCom).* The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed adequately to justify the decision in the *Unserved Area* proceeding to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites. The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' CGSAs based on their areas of actual service. The effect of the remand was the restoration of the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites.

6. *Second Further NPRM Proposal.* Following the *PetroCom* decision, the Commission issued the *Second Further NPRM,* in which it initiated a comprehensive reexamination of the cellular service rules for the Gulf. *See* Cellular Service and Other Commercial Mobile Radio Services in the Gulf of

Mexico, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, WT Docket No. 97–112 and CC Docket No. 90–6, *Second Further NPRM,* 65 FR 24168 (April 25, 2000). Specifically, the Commission proposed dividing the GMSA into a Coastal Zone and an Exclusive Zone. Under this proposal, the Coastal Zone would consist of the portion of the GMSA extending from the coastline of the Gulf of Mexico to the twelve-mile offshore limit, while the Exclusive Zone would extend from the twelve-mile limit to the southern boundary of the GMSA. In the Exclusive Zone, the two existing Gulf carriers would be able to move their offshore transmitters freely and to expand or modify their systems without being required to file additional applications, obtain prior Commission approval, or face competing applications for the right to serve the territory. In the Coastal Zone, the Commission proposed to apply its Phase II unserved area licensing rules. Thus, within the Coastal Zone, any qualified applicant (including both Gulf- and land-based carriers) would be permitted to apply to serve unserved areas, and all mutually exclusive applications would be subject to competitive bidding procedures.

7. *Comments and Carriers' Proposals.* While commenting land carriers generally support the Commission's proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone, most oppose its proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone. Instead, many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a ''buffer zone'' extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their SABs and overlap contours, subject to mandatory frequency coordination, but without protection from subscriber capture. In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.

8. A second alternative proposal has been advanced by PetroCom, the A-side Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular propose a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they would redraw the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, this proposal would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. A carrier, however, would be allowed to use a higher effective radiated power than that resulting from the Commission's SAB formula, based on measurement data demonstrating equal signal strengths at the coastline. The resulting SAB extensions, however, would not be included as part of the other carrier's CGSA. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to ''reclaim'' the area if a new or relocated drilling platform enabled it to provide service. PetroCom and US Cellular also propose that pending, non-mutually exclusive Phase II applications to serve coastal waters be granted.

9. Coastel, the B-side Gulf carrier, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that the Commission terminate this rulemaking without adopting new rules. According to Coastel, the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf. Coastel contends that this change in circumstances obviates the need for further rulemaking, and further argues that the Commission's proposals in the *Second Further NPRM* would not reduce conflict because many issues would still remain to be resolved between carriers.

II. Discussion

10. The Commission finds that the record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. The development of cellular service has followed different paths in these two areas, which justifies treating them differently so as to spur the development of reliable service where needed, minimize the disturbance to current operations and contractual arrangements, and address the issues raised in the *PetroCom* remand.

A. Establishment of the Eastern Gulf Coastal Zone

11. As noted above, the circumstances with respect to the Gulf carriers' current service to and ability to serve the coastal areas vary greatly between the Eastern and Western Gulf. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. The record also indicates no likelihood of such platforms being constructed in the Eastern Gulf any time in the near future. The Commission agrees with PetroCom and US Cellular that, in light of these circumstances, there is a basis to differentiate between its approach to the Eastern Gulf and the Western Gulf.

12.The Commission concludes that, in the Eastern Gulf, the best way to ensure that seamless cellular service is provided '' both on land and in coastal waters—is to adopt its proposal to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water. Moreover, § 22.911(d)(2)(i) requires a land-based carrier in Florida to obtain the consent of the Gulf carrier to extend coverage over water, even though the Gulf carriers have no cellular facilities to serve Florida coastal waters.

13. Establishing a Coastal Zone in the Eastern Gulf will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength, thereby improving the reliability of service, from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

14. The remainder of the Eastern Gulf that is not included in the Coastal Zone, along with the entire Western Gulf, will be designated as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further NPRM,* the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will also have the flexibility to add, remove, modify, or relocate sites in the Exclusive Zone without notice to or approval by the Commission.

15. In the *Second Further NPRM,* the Commission proposed that the Coastal Zone would be coextensive with the territorial waters of the United States, a maritime zone that extends

approximately twelve nautical miles from the U.S. coastline. The Commission concludes that the territorial water limit will serve as an appropriate boundary between the Coastal Zone and the Exclusive Zone in the Eastern Gulf. This approach is also consistent with the approach the Commission has taken more recently in established services where it has provided for licensing in the Gulf. In the context of WCS, the Commission drew the boundary between land-based operations and Gulf-based operations at the territorial water limit. *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order,* 62 FR 09636 (March 3, 1997). Therefore, the Commission defines the Eastern Gulf Coastal Zone as the portion of the Gulf that is bounded by a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of approximately twelve nautical miles from the shoreline. A map setting out the coordinates of the Eastern Gulf Coastal Zone is attached at Appendix A.

16. The Commission believes that the most advisable course for licensing the Eastern Gulf Coastal Zone will be to define the region as unserved area. This will enable all entities to apply to serve areas of the Coastal Zone that are not currently served. Accordingly, the Commission will begin accepting Phase II unserved area applications to serve portions of the Coastal Zone sixty days after the effective date of the rules. Further, in the event of mutually exclusive applications, use of the Commission's unserved area competitive bidding rules will ensure that the authorization to serve a given area is awarded to the carrier that values it most and will help maximize the use of the spectrum. Carriers who apply to serve portions of the Eastern Gulf Coastal Zone will be required, consistent with the Commission's rules for terrestrial unserved areas, to construct facilities in these areas within one year from the date of receiving approval to serve this area.

17. The Commission recognizes that as a result of its decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. The Commission concludes, however, that the above-described public interest benefits of this course outweigh the costs. Because the Gulf carriers have no operations in the Eastern Gulf, this decision will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers. Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, the Commission's decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules the Commission is adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

18. Finally, the Commission notes that some land-based carriers in Florida have previously-granted *de minimis* extensions extending into the GMSA. The creation of the Eastern Gulf Coastal Zone is not intended to limit the scope of existing cellular operations, and the Commission therefore grandfathers all existing *de minimis* extensions of land carriers in the Eastern Gulf Coastal Zone. However, if a land carrier wishes to incorporate the area within an existing *de minimis* extension into its CGSA, it must file an unserved area application. In addition, carriers who are currently operating on the Florida coast under Special Temporary Authorization must file an unserved area application if they wish to operate on a permanent basis.

B. Licensing in the Western Gulf

19. While the Gulf carriers do not have offshore facilities in the Eastern Gulf, they have built an extensive offshore cellular network on oil and gas drilling platforms in the Western Gulf. In substantial portions of the Western Gulf, particularly off the coast of Louisiana, Mississippi, and Alabama, many of these platforms are located only a few miles from shore, enabling the Gulf carriers to extend coverage to the coastline.

20. The close proximity of these water-based sites to the coastline has given rise to technical and operational conflicts between the Gulf carriers seeking to provide service in coastal waters and the adjacent land-based carriers seeking to provide service to coastal communities, resorts, beaches, and coastal roads. In areas where land and water-based sites are close to one another, Gulf and land carriers must reduce their respective signal strength near the coastline in order to avoid incursions into their counterparts' markets. Some land-based carriers contend that the requirement to limit signal strength has led to gaps in their coverage along the coast, and that the Gulf carriers refuse to consent to SAB extensions into the Gulf that are needed to allow the land-based carriers to provide seamless service on land. The Gulf carriers dispute this characterization, and contend that it is the land-based carriers who are preventing them from providing ubiquitous service in the Gulf.

21. In addition, both Gulf and land carriers accuse one another of improperly extending coverage across the coastline into their counterparts' markets and consequently capturing subscriber traffic that should be served by the home carrier. Some land-based carriers contend that their customers have complained about placing calls on land that were captured by the Gulf carrier's system rather than the land-based system, requiring the customer to pay extremely high roaming charges to the Gulf carrier. The Gulf carriers argue that the land carriers have failed to document these alleged incidents of capture, that such capture is extremely uncommon, and that it is far more common in the Gulf for offshore cellular calls to be captured by land-based systems.

22. In the *Second Further NPRM,* the Commission proposed to bifurcate the Western Gulf into a Coastal and Exclusive Zone in the same manner that the Commission proposed (and is adopting today) for the Eastern Gulf. The Commission stated that it would grandfather all existing Gulf facilities, but that any unserved area in the Coastal Zone (i.e., area not currently served by the Gulf carrier from an existing offshore drilling platform) would be available for licensing under its cellular unserved area licensing rules. As noted above, commenters generally oppose this proposal, though from different perspectives. Most land carriers, led by ALLTEL, propose that the Coastal Zone should not be subject to unserved area licensing, but should instead be open to both Gulf and land-based carriers on a shared, coordinated basis. PetroCom, with the concurrence of US Cellular, opposes the creation of a Coastal Zone in the Western Gulf, proposing instead that land-based carriers be allowed to expand their SAB contours into unserved portions of the Gulf but also required to pull back if a Gulf carrier sought to serve the area. Coastel opposes the *Second Further NPRM* proposal and advocates continuing to apply the current rules without modification.

23. In evaluating its proposal and the alternatives presented by commenters,

the Commission considers it important to note that circumstances in the Western Gulf appear to have changed significantly since the adoption of the *Second Further NPRM.* First, in the *Second Further NPRM,* the Commission expressed concern regarding gaps in coverage of the Western Gulf, and sought to advance a solution that would ensure ubiquitous coverage of coastal waters (whether from land or water-based transmitters) in order to make service available not only to personnel on drilling platforms but also to coastal boat traffic. The record in this proceeding indicates that, in the past few years, the Gulf carriers have substantially expanded their networks and improved their coverage of the Western Gulf. As a result, there appear to be fewer gaps in coverage of coastal waters than there were previously.

24. Second, while there are still significant disputes between Gulf and land-based carriers generally, some Gulf and land carriers have successfully negotiated agreements since the *Second Further NPRM* that provide a mutually agreed-upon framework for cooperative operation along portions of the Western Gulf coast. In particular, PetroCom, the A-side Gulf carrier, has entered into a series of extension and collocation agreements with US Cellular and several other A-side land-based carriers. These agreements facilitate seamless coverage of coastal areas (over both land and water) and apply negotiated solutions to issues such as coverage, capture, and roaming rates. A similar accord has been negotiated by Coastel, the B-side Gulf carrier, and ALLTEL, the principal B-side land carrier, by which they have reached agreement with respect to their operations along the Alabama coastline, specifically in Mobile Bay.

25. In light of these developments, the Commission believes that the best way to achieve reliable, ubiquitous service in the Western Gulf is to encourage further reliance on negotiation and market-based solutions to the fullest extent possible. The fact that some Gulf- and land-based carriers have reached negotiated agreements suggests that carrier-driven solutions to these issues are possible without substantial changes to existing rules. Moreover, in other instances where negotiations have not been successful, a partial cause may be uncertainty and speculation regarding possible rule changes that could result from this proceeding. Thus, adopting rules that substantially change the relationship between land and Gulf carriers in the Western Gulf could be counter-productive by further delaying negotiated solutions and even leading parties to seek to unwind existing agreements.

26. Therefore, upon review of the record, the Commission concludes that it should not adopt its *Second Further NPRM* proposal to create a Coastal Zone subject to unserved area licensing rules in the Western Gulf. First, because of the buildout that has occurred in the Western Gulf in recent years, there is relatively little unserved area in what would comprise the Coastal Zone. Second, to the extent that applying unserved area licensing rules would impose a ''use or lose'' regime on the Gulf carriers (*i.e.,* a Gulf carrier providing service from an offshore platform could permanently lose the right to serve that portion of the Gulf if the platform were moved out of the area, even if the relocation was not permanent), the Commission is concerned that such a fundamental change in the rules could delay resolution of coverage conflicts and discourage negotiation of extension and collocation agreements between land and Gulf carriers.

27. The Commission similarly declines to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is designed to provide a basis for negotiated agreements, implementing it as a formal rule would, in effect, turn the Coastal Zone into a ''no-man's land'' where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. While the Commission has no objection to voluntary agreements along the lines of ALLTEL's proposal, it sees no compelling public interest reason to codify it in its rules, and is concerned that doing so could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone. In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

28. The Commission concludes that the wisest course is to designate a Gulf of Mexico Exclusive Zone by generally maintaining the currently applicable rules and continuing to encourage carriers to resolve their differences through negotiated agreements. Specifically, the Commission identifies the GMSA area west of the Eastern Gulf Coastal Zone as part of the Gulf of Mexico Exclusive Zone, which will reach landward up to the land-water boundary in the western portion of the Gulf. In reaching this conclusion, the Commission does not agree with Coastel's position that no revisions to the rules are required. However, the Commission believes that, with relatively minor modifications, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

29. Accordingly, in the Western Gulf, the Commission will maintain the GMSA border at the coastline as currently defined in its rules, and will allow the Gulf carriers to provide service throughout the Gulf of Mexico Exclusive Zone regardless of the location of their cell sites at any particular time. Thus, Gulf carriers will not be subject to a ''use or lose'' regime based on the movement of offshore drilling platforms. The Commission notes that this approach addresses the concern expressed by the court in *PetroCom* that the Commission's rules for the Gulf carriers take into account the transitory nature of water-based transmission sites. The Commission's decision gives the Gulf carriers full flexibility to build, relocate, modify and remove offshore facilities throughout the Western Gulf without seeking prior Commission approval or facing competing applications.

30. In the *Second Further NPRM,* the Commission noted that, although under its proposal only the Gulf carriers would have exclusive rights within the Exclusive Zone, the Commission tentatively concluded that *de minimis* extensions into unserved areas in the GMSA Exclusive Zone should be permitted. Upon further consideration of the proposal, however, the Commission does not believe it is necessary to permit *de minimis* extensions into the Exclusive Zone in light of the ability of the land-based and Gulf carriers to enter into agreements regarding their operations. In instances where it is necessary for a carrier to extend into an adjacent carrier's licensed area, the record reflects that contract extensions (*i.e.* where the Gulf and land licensees mutually agree to the extension) are sufficient to ensure reliable coverage.

31. The Commission recognizes that the rules it is adopting for the Western

Gulf cannot resolve all of the technical and operational conflicts (*e.g.,* interference, subscriber capture) that have arisen in areas where Gulf carriers and land carriers operate in close proximity to one another. Ultimately, only negotiation and cooperative arrangements between land and Gulf-based carriers can resolve these conflicts. Nonetheless, because the Commission's decision provides finality regarding its licensing and operational rules, the Commission expects that it will facilitate and speed the progress of such negotiations. The Commission emphasizes that under its decision today, parties remain free to negotiate consensual agreements that provide for extensions, coordination of frequencies, collocation, facilities sharing, or other solutions, so long as such agreements do not affect the rights of third parties. Thus, nothing in the decision is intended to modify or alter the effect of the existing agreements that have been negotiated by PetroCom or Coastel with adjacent land-based carriers. The Commission encourages Gulf and land-based carriers who have not reached negotiated agreements to enter into negotiations that could result in such agreements.

32. In seeking to facilitate negotiated agreements, it is the Commission's goal to create incentives for carriers to reach agreements that are not only mutually beneficial, but that also benefit existing and potential cellular subscribers. For example, while the Commission recognizes that the operating costs of Gulf carriers are typically higher than those of land-based carriers, the Commission seeks to ensure that they cannot recover those costs by charging uncompetitive rates or roaming charges to their customers, including the numerous land-based subscribers who may roam onto a Gulf carrier's network when close to the coastline (*e.g.,* recreational boaters). The Commission believes that the rules it adopts will help to foster a competitive marketplace in the Gulf that will protect consumers from such charges and practices. The Commission notes, for example, that some of the recently negotiated agreements between Gulf and land-based carriers provide for ''in-shore'' roaming rates that are comparable to roaming rates on land as opposed to the higher rates that PetroCom charges roamers operating significantly further out to sea. This creates a competitive incentive for similar terms to be negotiated in future agreements also. Moreover, the deployment of non-cellular services such as PCS along the Gulf coast will apply pressure on both cellular providers in the Gulf, and their land-based counterparts, to offer competitive services and rates.

C. Service Area Boundary Formula

33. In the *Unserved Area Second Report and Order,* the Commission applied the standard land-based SAB formula to operations by land carriers along the Gulf coast (''land formula''), but adopted a separate mathematical formula to define the SABs of facilities operated by the Gulf carriers from offshore sites (''water formula'') in the *Unserved Area Third Report and Order.* The use of different formulas recognized that cellular signals transmitted over water typically have stronger propagation characteristics (*i.e.,* can be received at greater distances from the transmitter) than comparable signals transmitted over land, which are attenuated by variations in terrain, buildings, trees, and other obstacles. The two SAB formulas also incorporated different assumptions regarding receivers: the land formula determined the distance to the service area boundary that results in reliable service to a conventional mobile unit, while the water formula established the distance to the service area boundary that results in reliable service to a marine mobile unit with a mast-mounted antenna. In the *Second Further NPRM,* the Commission sought comment on whether to retain the two-formula approach or to adopt an alternative ''hybrid'' approach that would account for signals in the Gulf coastal region that are transmitted over both land and water.

34. The Commission will continue to use the two existing SAB formulas for land and water-based sites, respectively. While no mathematical formula can precisely duplicate actual signal propagation in all circumstances, the Commission concludes that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water. In addition, the record reflects little support for a hybrid formula, and the Commission finds that it would be difficult to establish such a formula that would account for the variation in propagation of a single signal over both land and water. Finally, retaining the existing SAB formulas is consistent with the Commission's overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts. The Gulf carriers have been using the water formula to depict SAB contours for their facilities operating in the Gulf since the formula was adopted, while the land carriers have used the land-based formula for their facilities. Consequently, changing the SAB definitions at this point could lead to one side or the other unilaterally increasing their transmitter power under the revised definitions, which could upset existing agreements and create new conflicts. Of course, this does not preclude parties from entering into voluntary agreements that would allow for consensual transmitter power adjustments based on alternative contour definitions.

D. Placement of Transmitters

35. When the Commission initially licensed carriers to provide cellular service in the Gulf, it did not prohibit them from placing sites on land, but required Gulf carriers to avoid causing significant overlap of their reliable service area contours with land-based licensees. Subsequently, the Commission determined that allowing Gulf carriers to place transmitters on land would cause significant incursions over land and hamper the ability of land-based MSA and RSA licensees to carry out the initial build out of their systems. Thus the Commission concluded that Gulf carriers should not be permitted to place transmitters on land without the consent of the affected land-based carrier.

36. In the *Second Further NPRM,* the Commission observed that the land-based licensees along the Gulf coast have built out their cellular systems to encompass nearly the entire coastal land area of the Gulf region, and tentatively concluded that it was no longer necessary to prohibit Gulf carriers from siting on land, so long as no overlap with any land-based carrier's CGSA occurred. The Commission therefore proposed to abandon its blanket prohibition against Gulf carriers placing their transmitters on land, and proposed to rely solely on its CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter was permissible. *See* 47 CFR 22.912. In light of the course the Commission now takes, the Commission believes that it is appropriate to adopt this part of the proposal from the *Second Further NPRM* and permit Gulf carriers to operate land-based sites, subject to SAB extension rules as discussed above. The Commission believes that this additional flexibility will help facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

E. Pending Applications

1. Pending Phase II Applications

37. In December 1992, following its adoption of cellular unserved area licensing rules applicable to the Gulf, the Commission accepted Phase II applications for unserved area licenses in the GMSA. Many of these applications were petitioned against by the Gulf carriers. In addition, PetroCom filed a Phase II application that remains pending. However, following the *PetroCom* remand of the unserved area rules as they applied to the GMSA, the Commission suspended processing of these applications pending reconsideration of its policies in the Gulf region. In the *Second Further NPRM,* the Commission proposed that areas of the Coastal Zone that do not receive cellular service be treated as unserved areas and that Phase II competitive bidding procedures should be implemented for those areas. The Commission further proposed that all unserved area applications previously filed to serve Coastal Zone areas would be dismissed without prejudice, and that applicants would be allowed to resubmit their applications sixty days after the effective date of this rulemaking.

38. In light of its actions set out here, the Commission will dismiss all pending Phase II applications and associated petitions to deny. In both the Western Gulf, where the Commission has decided not to apply unserved area licensing procedures, and the Eastern Gulf, where the Commission is instituting unserved area licensing in the Coastal Zone, the Commission will allow carriers to refile to the extent allowed under the new rules adopted in this *Report and Order.* In light of the passage of several years since the applications were filed, the Commission concludes that dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

2. Pending *De Minimis* Extension Applications

39. Following the *PetroCom* remand, the Commission also suspended processing of applications for *de minimis* extensions into the Gulf. In the *Second Further NPRM,* the Commission proposed to dismiss all such pending applications because the *PetroCom* court directed us to vacate former § 22.903(a) to the extent that it applied to the Gulf carriers, and because virtually all applications for contour extensions were subject to petitions to deny and applications for review. The Commission also noted that pending applicants would not be prejudiced by a dismissal of extension applications, because such applicants would have the opportunity to resubmit applications under the Commission's revised licensing rules for unserved areas in the Gulf.

40. Based on the actions the Commission takes in the *Report and Order,* the Commission will dismiss all pending extension applications and allow carriers to refile to the extent permissible under the rules the Commission adopts in this *Report and Order.* The Commission concludes that dismissal is the more equitable course in light of the passage of time since the applications were filed and the fact that the rules under which they were filed have undergone some modification.

F. Other Services.

41. In the *Second Further NPRM,* the Commission requested comment regarding possible operations in the Gulf by CMRS licensees in services other than cellular. Specifically, the Commission asked whether the Commission should establish a Gulf licensing area, analogous to the cellular GMSA, for use in other CMRS services and, if such a licensing area were established, where the boundary should lie between it and the adjacent licensing areas of land-based CMRS providers. The Commission received only limited comment on the issue of licensing such services in the Gulf. Stratos Offshore Services Company (''Stratos''), which operates a microwave network that supports communications in the Gulf, generally supports creating a license area for the non-cellular services to protect licensees operating in the Gulf. Stratos, however, does not support licensing PCS in the Gulf because of the high cost of relocating microwave networks operating at 2 GHz. On the other hand, DW Communications, a 900 MHz operator with at least one license along the Gulf coast, argues that creating Gulf area licenses in other services would create more problems than would be solved. PCS licensees Sprint PCS and Verizon Wireless each argue that the Commission's PCS service area rules define boundaries based on county lines, which, under state law, extend into the Gulf's offshore areas, and therefore, the Commission should not create a separate license area for PCS in the Gulf.

42. Since the issuance of the *Second Further NPRM,* the Commission has established Gulf licensing areas in several other services, including Wireless Communications Service (''WCS''), Multiple Address Systems (MAS), 746–747/776–777 and 762–764/792–794 MHz bands (''700 MHz Guardband''), 24.25–24.45 GHz and 25.05–25.25 GHz bands (''24 GHz''), and the 746–764 MHz and 776–794 MHz bands (''700 MHz''). In the case of WCS, the Commission incorporated United States territorial waters in the Gulf, *i.e.,* waters from the shoreline to a line 12 nautical miles offshore, into the adjacent land-based licensing areas. Thus, the WCS licensing area, unlike the original cellular GMSA, extends seaward from the 12-mile limit, and includes coastal waters. For 700 MHz, the Commission established Economic Area Groupings (EAGs) whereby the Gulf of Mexico is divided in two, with the eastern portion being included in the license for Southeast EAG, and the western portion being included in the license for the Central/Mountain EAG.

43. With respect to non-cellular CMRS services, the Commission concludes that it should not create a Gulf licensing area in this proceeding for all such services, but instead should take up the issue of establishing a Gulf licensing area on a service-by-service basis, as it did for WCS, MAS, 24 GHz, 700 MHz Guardband, and 700 MHz. The dearth of support in this proceeding advocating creation of Gulf licensing areas suggests that there is limited interest among carriers in many non-cellular CMRS services in providing service to offshore drilling facilities analogous to that provided by the Gulf cellular carriers. Furthermore, to the extent that carriers in a particular service may wish to establish a Gulf licensing area for that service, it can address such issues separately, taking into account the specific characteristics of that service.

44. On the other hand, land-based carriers in services that have no service provider licensed in the Gulf have expressed significant interest in the Commission clarifying whether they can extend their coverage offshore from land-based sites. The Commission finds that in those services where there is no licensed carrier in the Gulf, it is in the public interest to allow land-based CMRS carriers to extend their coverage offshore, both to increase coverage and service quality for land-based customers along the coastline and to offer service to coastal boating traffic. In general, the geographic service area definitions used for non-cellular CMRS services are based on county boundaries, which extend over water pursuant to state law. The Commission therefore clarifies that the licensing areas of land-based

licensees in such services extend to the limit of county boundaries that extend over water. In addition, licensees may provide service extending further into the Gulf on a secondary basis so long as they comply with the technical limitations applicable to the radio service and do not cause co-channel or adjacent channel interference to others.

45. Finally, PetroCom has filed a petition for rulemaking with respect to establishment of special interference criteria for Gulf-based facilities. Although the Commission has never adopted specific rules for licensing of water-based SMR facilities, the Commission has issued some site-specific SMR licenses to PetroCom for sites in the Gulf. Under the existing SMR rules, these sites are entitled to interference protection on the same basis as site-specific licenses on land. In its petition, PetroCom sought to change the interference protection rules for site-based SMR facilities in the Gulf, arguing that the land-based rules did not adequately protect its water-based facilities. The Commission incorporated PetroCom's petition into the *Second Further NPRM* and sought comment on it. However, the Commission received only limited comment on issues relating to Gulf-based SMR facilities. Moreover, since the *Second Further NPRM,* the Commission has issued land-based EA licenses in the 800 MHz SMR service, and have received no indication that the operations of these licensees have caused interference to Gulf-based SMR facilities. The Commission concludes that in light of these circumstances, the record before us does not support amending the existing SMR rules as they apply to service in the Gulf, and the Commission therefore denies PetroCom's petition. However, PetroCom or any other party is free to file an updated petition for rulemaking if it believes that current or potential circumstances warrant revision of the SMR rules to protect the operation of Gulf-based facilities.

III. Conclusion

46. The Commission concludes this reevaluation of its Gulf cellular rules by finding that the carriers themselves are best able to resolve most of the issues standing in the way the provision of reliable, ubiquitous cellular coverage to both land-based and Gulf-based subscribers in the Gulf region. The imposition of a new regulatory structure would cause additional and unnecessary delay in meeting this goal. In addition, the record reflects that a number of carriers have been able to resolve their differences under the current rules. The Commission believes the few changes it now makes help to strike a fair balance between the interests of the carriers, the interest of the public, and the need for flexibility to deal with these issues.

IV. Procedural Matters

Final Regulatory Flexibility Act Analysis

47. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 604 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further NPRM.* The Commission sought written public comment on the proposals in the *Second Further NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

48. In this *Report and Order*, the Commission resolves certain issues raised in the *Second Further NPRM* in this proceeding, in which the Commission proposed changes to its cellular service rules for the Gulf of Mexico Service Area (GMSA). This decision also responds to the remand by the United States Court of Appeals for the District of Columbia Circuit in the *PetroCom*. In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed to adequately justify the decision to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites. The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' Cellular Geographic Service Areas (CGSA) based on their areas of actual service. The effect of the remand was the restoration of the original rules that defined the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites. In this *Report and Order*, the Commission adopts a bifurcated approach to cellular licensing in the Gulf, based on the differences between the deployment of cellular service in the Eastern Gulf (the Florida Gulf coast) and the Western Gulf (the Texas, Louisiana, Mississippi, and Alabama Gulf Coast). In the Eastern Gulf, where there are no offshore oil and gas drilling platforms on which to site cellular facilities, the Commission adopts its proposal to establish a Coastal Zone in which its cellular unserved area licensing rules will apply. In the Western Gulf, the Commission finds that the extensive deployment of both Gulf-based and land-based facilities that has occurred in the past few years makes adoption of its *Second Further NPRM* proposal impractical. Instead, the Commission concludes that cellular service in the Western Gulf should continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. Accordingly, the Commission establishes the Gulf of Mexico Exclusive Zone, encompassing the Western Gulf and areas of the Eastern Gulf outside of the Coastal Zone, in which the Gulf carriers will have the exclusive right to operate.

49. The *Second Further NPRM* also requested comment regarding possible operations in the Gulf by Commercial Mobile Radio Services (CMRS) licensees for services other than cellular. Given the limited comment the Commission received on these issues, it declines to adopt specific licensing and service rules for the provision of non-cellular services in the Gulf at this time. The Commission concludes, however, that the boundaries of non-cellular CMRS markets with market areas that are derived from the aggregation of counties (e.g. Economic Areas, Basic Trading Areas), are coterminous with county boundaries absent specific service rules to the contrary.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

50. Although the Commission has received a number of comments in response to the *Second Further NPRM*, it received only one comment in response to the IRFA. However, as described below, the Commission has nonetheless considered potential significant economic impacts of the rules on small entities.

51. *Comments raised in response to the Second Further NPRM regarding proposals that may have an impact on small entities.* In response to the *Second Further NPRM*, the Commission received a number of comments and alternative proposals from land-based and Gulf-based carriers, many of which have been supplemented recently with *ex parte* presentations. Some

commenting land carriers generally support the proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone, while most oppose the Commission's proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone. Many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a ''buffer zone'' extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their service area boundaries (SABs), subject to mandatory frequency coordination, but without protection from subscriber capture. In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.

52. A second alternative proposal has been advanced by PetroCom, a Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular advocate a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they propose that the Commission extend the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, PetroCom and US Cellular would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to ''reclaim'' the area if a new or relocated drilling platform enabled it to provide service.

53. Another commenter, Coastel, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that the Commission terminate this rulemaking without adopting new rules. Coastel asserts that the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf. Coastel contends that this change in circumstances obviates the need for further rulemaking, and argues that the Commission's proposals in the *Second Further NPRM* would not reduce conflict because many issues would still remain to be resolved between carriers.

54. With respect to the issue of whether or not to create Gulf of Mexico service areas for non-cellular commercial mobile radio services (CMRS), a few commenters state that customers in the Gulf would benefit from additional CMRS options. Others, however, oppose the creation of additional market areas in the Gulf. Commenters argue that creating Gulf area licenses in other services would create more problems than would be solved. A few commenters assert that incumbent licensees with markets adjacent to the Gulf are already authorized to serve the Gulf's offshore areas.

55. Certain commenters also express concern over the Commission's proposal to dismiss all pending Phase II and *de minimis* applications. Some commenters object to the dismissing of applications because applicants have spent time and resources to file the applications, and suggest that the Commission process the pending applications instead.

56. Further, the two Gulf carriers argue that they should be permitted to site their transmitters on land. Other commenters argue that such sites should not be permitted, because interference and capture issues will likely arise if Gulf carriers are permitted to locate transmitters on land without the land-based carrier's consent. Commenters also generally oppose the proposal to adopt a ''hybrid'' propagation approach that would account for signals in the Gulf coastal region that are transmitted over both land and water. Commenters argue that a hybrid formula would be unworkable and expensive.

57. *Comment in response to the IRFA.* In an *ex parte* submission filed on August 21, 2001, PetroCom revised its proposal and that of U.S. Cellular for consideration by the Commission as an alternative to the agency's proposed rules in this proceeding pursuant to the RFA. PetroCom contends that it has opposed any changes to the current definition of its CGSA on the Western (non-Florida) side of the Gulf where it has fully built out infrastructure providing cellular service to customers throughout the proposed Coastal Zone, and that such action would adversely impact the proposed Coastal Zone rules. PetroCom states that there is no factual, legal or policy reason to change the current rules that require it's consent to the SAB extensions of land carriers that cross the coastline into it's CGSA.

58. PetroCom asserts that paragraphs 64–72 of the *Second Further NPRM* violates several RFA requirements. Among its assertions, PetroCom states that the Commission's IRFA does not describe the impact of the proposed Coastal Zone on small entities, and that the Commission failed to describe alternatives to the Coastal Zone as required by the RFA. Further, PetroCom asserts that the Commission failed to provide a small entity impact analysis with respect to the agency's proposal and an analysis of alternatives. Further still, PetroCom calls attention to the Commission's IRFA in the *Second Further NPRM*, which it avers, contained no discussion or analysis of the 15-day reporting rule that was proposed in paragraph 47 which conflicts with Section 1.947 of the rules that contains a 30-day reporting rule. PetroCom also asserts that the Commission's definition of a small business has not complied with SBA rules.

59. PetroCom states that there is nothing in the record that will support a finding in an FRFA that the creation of a Coastal Zone as proposed in the *Second Further NPRM* **IS THE BEST ALTERNATIVE.** Further, PetroCom asserts that the alternatives advocated by other carriers (*see infra*) will significantly affect the annual revenues of the Gulf carriers. PetroCom argues that, among the various alternatives, its joint proposal best minimizes adverse impacts on small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

61. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons. 13 CFR 121.201. According to the Census Bureau, only twelve radiotelephone (wireless) firms from a

total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to a recent *Telecommunications Reporting Worksheet* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, and Specialized Mobile Radio (SMR) telephony carriers, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. The Commission estimates that there are fewer than 806 small wireless service providers that may be affected by these revised rules.

62. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone (Wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons. According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

63. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these definitions. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

64. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

65. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to a recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 172 small paging carriers that may be affected by the rules adopted herein. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

66. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the

1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the reauction of 422 C and F Block licenses. Of the 35 winning bidders, 30 were small business entities. Based on this information, the Commission concludes that there are approximately 261 small entity broadband PCS providers as defined by the SBA and the Commission's auction rules.

67. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

68. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

69. The auction of the 1,030 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission anticipates that a total of 2,823 EA licenses will be auctioned in the lower 80 channels of the 800 MHz SMR service. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the lower 80 channels that may ultimately be affected by these proposals could be as many as 2,823. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

70. In this *Report and Order*, the Commission reexamines its cellular service rules as they apply to the Gulf of Mexico Service Area. The principal goals in this proceeding are to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and to provide reliable, seamless service to the Gulf region. The Commission does not impose reporting or record keeping requirements in this *Report and Order*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

72. *Creation of the Eastern Gulf Coastal Zone and Gulf of Mexico Exclusive Zone.* The record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. As the Commission explains in its *Report and Order*, the best way to ensure that seamless cellular service is provided in the Eastern Gulf—both on land and in coastal waters—is to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water.

73. Establishing an Eastern Gulf Coastal Zone will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength (and resulting coverage) from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

74. The remainder of the eastern half of the Gulf that is not included in the Eastern Gulf Coastal Zone will be designated, along with the entire Western Gulf, as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further NPRM*, the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will have full flexibility to build, relocate, modify and remove offshore facilities throughout the Gulf of Mexico Exclusive Zone without seeking prior FCC approval or facing competing applications. While the Commission does not agree with Coastel's position that no revisions to the rules are required, the Commission believes that with relatively minor modifications, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

75. The Commission recognizes that as a result of its decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf

carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. The Commission must weigh, however, not only the interests of the Gulf carriers, but also the interests of adjacent land-based carriers and, most of all, the need to provide cellular subscribers in the coastal region with seamless coverage by the most technically efficient means, whether from land or water-based sites. Because the Gulf carriers have no operations in the Eastern Gulf, this decision will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers. Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, the Commission's decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules the Commission is adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

76. The Commission declines to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is designed to provide a basis for negotiated agreements, the Commission believes the effect of this proposal would be to turn the Coastal Zone into a ''no-man's land'' where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. The Commission is concerned that adopting the ALLTEL proposal could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone. In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

77. *Service Area Boundary Formula.* In this *Report and Order* the Commission concludes that it should retain the existing land-based and water-based SAB formulas. The Commission concludes that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water, and are easier to use than a hybrid formula. Moreover, retaining the existing SAB formulas is consistent with the Commission's overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts.

78. *Placement of Transmitters.* The Gulf carriers urge the Commission to allow them to site their transmitters on land without the express consent of the applicable land-based licensees. The Commission believes that a blanket prohibition against Gulf carriers placing their transmitters on land is not necessary, and it will rely on its CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter is permissible. Although the Gulf carriers argue that this action is insufficient, the Commission believes that this will provide additional flexibility that will facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

79. *Pending applications.* In its *Report and Order*, the Commission concludes that areas of the Eastern Gulf Coastal Zone that do not receive cellular service shall be defined as unserved areas and that Phase II competitive bidding procedures implemented for those areas. All unserved area applications previously filed to serve Eastern Gulf Coastal Zone areas are dismissed, as well as their associated petitions to deny. Similarly, the Commission dismisses all pending *de minimis* extensions into the Gulf in this *Report and Order*. The Commission considered whether or not the dismissal of pending licenses would impose significant additional costs or burdens on carriers. The Commission finds that this action will not prejudice carriers because such applicants have the opportunity to resubmit applications to the extent allowed under the new rules adopted in the *Report and Order*. The Commission concludes that, in light of the passage of several years since the applications were filed, dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

80. *Report to Congress:* The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Paperwork Reduction Act Analysis

81. The actions taken in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

VI. Ordering Clauses

82. Pursuant to the authority of sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes are adopted.

83. Pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), the applications set forth below are dismissed.

84. The Wireless Telecommunications Bureau will begin accepting Phase II unserved area applications for the Gulf of Mexico Coastal Zone on July 2, 2002.

Pursuant to section (4)(i) of the Communications Act, as amended, 47 U.S.C. 154(i), the creation of the Gulf of Mexico Coastal Zone, the coordinates of which are represented in Appendix A, is adopted.

85. The Petition for Rulemaking filed by Petroleum Communications is *Denied*.

86. The rule changes set forth below will become effective May 3, 2002.

87. *It is further ordered* that this proceeding is *Terminated*.

List of Subjects in 47 CFR Part 22

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

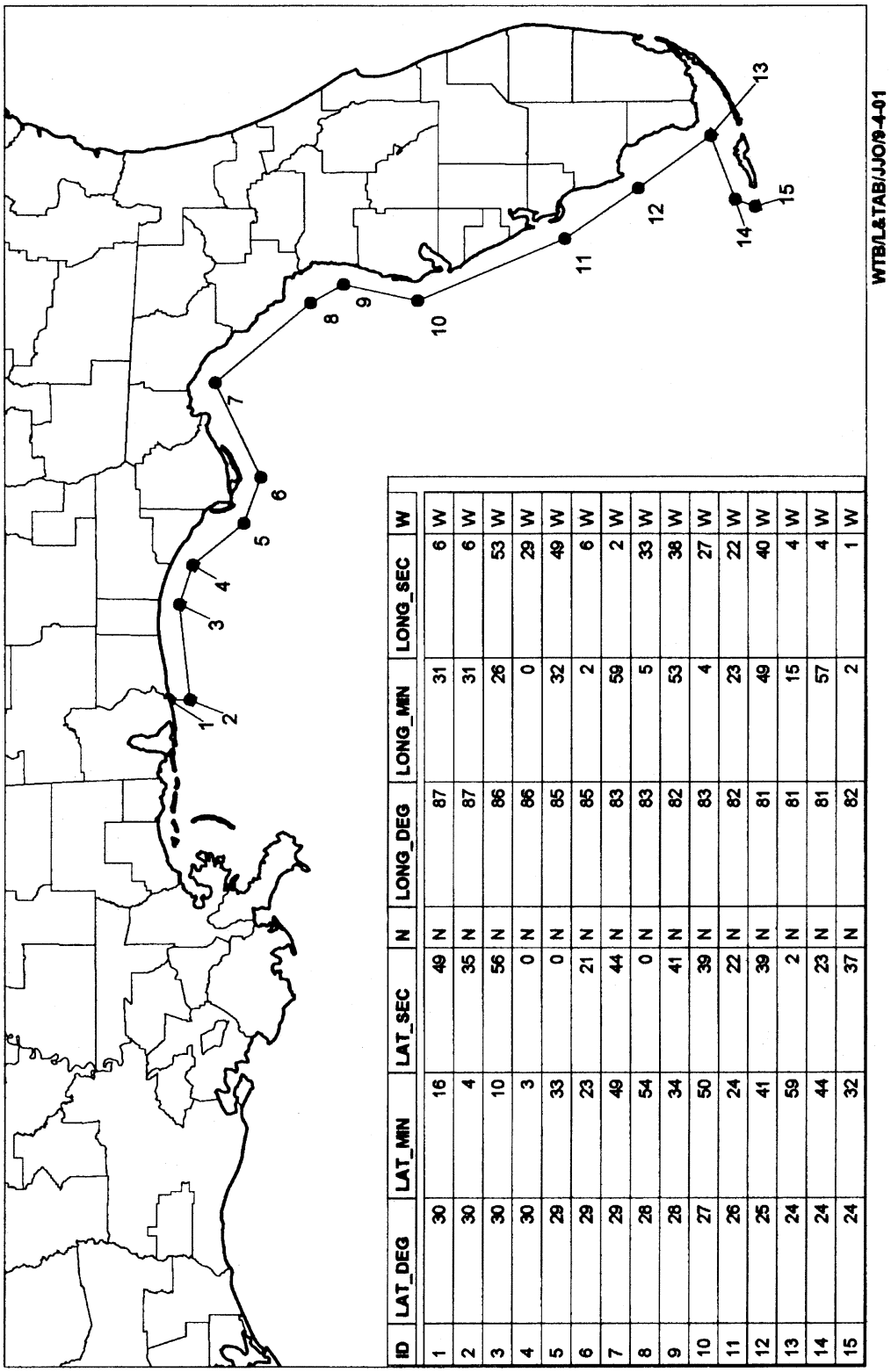
Note: The following appendix to the preamble will not appear in the Code of Federal Regulations.

BILLING CODE 6712–01–P

MAP OF EASTERN GULF COASTAL ZONE COORDINATES

Appendix A

Gulf of Mexico Coastal Zone for the the Cellular Radiotelephone Service



ID	LAT_DEG	LAT_MIN	LAT_SEC	N	LONG_DEG	LONG_MIN	LONG_SEC	W
1	30	16	49	N	87	31	6	W
2	30	4	35	N	87	31	6	W
3	30	10	56	N	86	26	53	W
4	30	3	0	N	86	0	29	W
5	29	33	0	N	85	32	49	W
6	29	23	21	N	85	2	6	W
7	29	49	44	N	83	59	2	W
8	28	54	0	N	83	5	33	W
9	28	34	41	N	82	53	38	W
10	27	50	39	N	83	4	27	W
11	26	24	22	N	82	23	22	W
12	25	41	39	N	81	49	40	W
13	24	59	2	N	81	15	4	W
14	24	44	23	N	81	57	4	W
15	24	32	37	N	82	2	1	W

BILLING CODE 6712–01–C

Phase II and De Minimis Extension Applications

The following pending Phase II applications for unserved area licenses in the Gulf of Mexico Service Area (GMSA) and applications for *de minimis* extensions into the GMSA will be dismissed. Any associated pleadings relating to these applications are also dismissed.

Cellular Block ''A'' applications	Cellular Block aaB'' applications
07433–CL–MP–902.	10152–CL–P–306–B–93
07440–CL–MP–95.	01621–CL–MP–93
01091–CL–CP–95.	01613–CL–MP–93
01094–CL–CP–95.	04076–CL–MP–95
01096–CL–CP–95.	04915–CL–MP–95
01328–CL–CP–95.	06794–CL–MP–95
01329–CL–CP–95.	07427–CL–MP–95
02025–CL–CP–95.	00103–CL–MP–96
02163–CL–CP–95.	02245–CL–MP–96
02165–CL–CP–95.	03856–CL–P2–97
04160–CL–CP–95.	03857–CL–P2–97
05605–CL–P2–95.	03858–CL–P2–97
05913–CL–MP–95.	03859–CL–MP–97
06361–CL–P2–95.	03860–CL–MP–97
01743–CL–P2–96.	
04235–CL–P2–96.	
04992–CL–P2–96.	
00700–CL–P2–97.	
02590–CL—97 ...	
02591–CL—97 ...	
02592–CL—97 ...	
02593–CL—97 ...	
02594–CL—97 ...	
02595–CL—97 ...	
02596–CL—97 ...	
02597–CL—97 ...	
02600–CL–P2–97.	
01242–CL–MP–98.	
01243–CL–MP–98.	
01244–CL–MP–98.	
01245–CL–MP–98.	
02407–CL–P2–98.	

Rule Changes

For the reasons discussed in the *Preamble*, the Federal Communications Commission amends 47 CFR Part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 151, 222, 303, 309 and 332.

2. Section 22.99 is amended by adding the following definition, in alphabetical order to read as follows:

§ 22.99 Definitions.

* * * * *

Gulf of Mexico Service Area (GMSA). The cellular market comprising the water area of the Gulf of Mexico bounded on the West, North and East by the coastline. Coastline, for this purpose, means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. Inland waters include bays, historic inland waters and waters circumscribed by a fringe of islands within the immediate vicinity of the shoreline.

* * * * *

3. Section 22.911 is amended by removing the Note to paragraph (a) and revising paragraph (a)(2) introductory text to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(a) * * *

(2) For cellular systems with facilities located within the Gulf of Mexico Service Area, the distance from a cell transmitting antenna to its SAB along each cardinal radial is calculated as follows:

* * * * *

4. Section 22.946 is revised to read as follows:

§ 22.946 Service commencement and construction systems.

(a) *Commencement of service.* New cellular systems must be at least partially constructed and begin providing cellular service to subscribers within the service commencement periods specified in Table H–1 of this section. Service commencement periods begin on the date of grant of the initial authorization, and are not extended by the grant of subsequent authorizations for the cellular system (such as for major modifications). The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met (*see* § 1.946 of this chapter).

TABLE H–1.—COMMENCEMENT OF SERVICE

Type of cellular system	Required to commence service in
The first system authorized on each channel block in markets 1–90.	36 months.
The first system authorized on each channel block in all other markets and any subsequent systems authorized pursuant to contracts in partitioned markets.	18 months.
The first system authorized on each channel block in the Gulf of Mexico Exclusive Zone.	No requirement.
All other systems	12 months.

(b) To satisfy the requirement of paragraph (a) of this section, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is not considered to be providing service to subscribers if mobile stations can not make telephone calls to landline telephones and receive telephone calls from landline telephones through the PSTN, or if the system intentionally serves only roamer stations.

(1) [Reserved]

(2) The licensee must notify the FCC (FCC Form 489) no later than 15 days after the requirements of paragraph (a) of this section are met.

(c) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which an authorization has been granted is one year from the date the authorization is granted. Failure to comply with this requirement results in termination of the authorization for the specific new or modified facility, pursuant to § 22.144(b).

5. Section 22.947 is amended by revising the introductory text to read as follows:

§ 22.947 Five-year buildout period.

Except for systems authorized in the Gulf of Mexico Exclusive Zone, the licensee of the first cellular system authorized on each channel block in each cellular market is afforded a five year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system within that market.

* * * * *

6. Section 22.949 is amended by revising the introductory text to read as follows:

§ 22.949 Unserved area licensing process.

This section sets forth the process for licensing unserved areas in cellular markets on channel blocks for which the five year build-out period has expired. This process has two phases: Phase I and Phase II. This section also sets forth the Phase II process applicable to applications to serve the Gulf of Mexico Coastal Zone.

* * * * *

7. Section 22.950 is added to read as follows:

§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA)

The GMSA has been divided into two areas for licensing purposes, the Gulf of Mexico Exclusive Zone (GMEZ) and the Gulf of Mexico Coastal Zone (GMCZ). This section describes these areas and sets forth the process for licensing facilities in these two respective areas within the GMSA.

(a) The GMEZ and GMCZ are defined as follows:

(1) *Gulf of Mexico Exclusive Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coastline line and the southern demarcation line of the Gulf of Mexico Service Area, excluding the area comprising the Gulf of Mexico Coastal Zone.

(2) *Gulf of Mexico Coastal Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coast line of Florida and a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of twelve nautical miles from the shoreline. The line is defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

(i) 30°16′49″ N 87°31′06″ W
(ii) 30°04′35″ N 87°31′06″ W
(iii) 30°10′56″ N 86°26′53″ W
(iv) 30°03′00″ N 86°00′29″ W
(v) 29°33′00″ N 85°32′49″ W
(vi) 29°23′21″ N 85°02′06″ W
(vii) 29°49′44″ N 83°59′02″ W
(viii) 28°54′00″ N 83°05′33″ W
(ix) 28°34′41″ N 82°53′38″ W
(x) 27°50′39″ N 83°04′27″ W
(xi) 26°24′22″ N 82°23′22″ W
(xii) 25°41′39″ N 81°49′40″ W
(xiii) 24°59′02″ N 81°15′04″ W
(xiv) 24°44′23″ N 81°57′04″ W
(xv) 24°32′37″ N 82°02′01″ W

(b) *Service Area Boundary Calculation.* The service area boundary of a cell site located within the Gulf of Mexico Service Area is calculated pursuant to § 22.911(a)(2). Otherwise, the service area boundary is calculated pursuant to §§ 22.911(a)(1) or 22.911(b).

(c) Operation within the Gulf of Mexico Exclusive Zone (GMEZ). GMEZ licensees have exclusive right to provide service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior Commission approval. There is no five-year buildout period for GMEZ licensees, no requirement to file system information update maps pursuant to § 22.947, and no unserved area licensing procedure for the GMEZ.

(d) Operation within the Gulf of Mexico Coastal Zone (GMCZ). The GMCZ is subject to the Phase II unserved area licensing procedures set forth in § 22.949(b).

[FR Doc. 02–4552 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 02–22]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsidered certain aspects of per-payphone compensation pursuant to a remand by the U.S. Court of Appeals for the District of Columbia Circuit. To implement the remand, the Commission established a new default compensation amount for completed access charge and subscriber 800 calls per payphone per month, and resolved the issues of compensation for 0+ and inmate calls, interest rates, and a number of other related matters.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Order on Reconsideration and Order on Remand (Order) in CC Docket No. 96–128, adopted January 28, 2002, and released on January 31, 2002. The complete text of this Order is available for public inspection Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the Commission's Consumer Information Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC 20554. The complete text is available also on the Commission's Internet site at www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com.*

Synopsis of Fourth Order on Reconsideration and Order on Remand

1. After a remand by the U.S. Court of Appeals for the D.C. Circuit in *Illinois Pub. Telecomm. Ass'n* v. *FCC,* 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g,* 123 F.3d 693 (D.C. Cir. 1997), cert. *denied sub nom. Virginia State Corp. Comm'n* v. *FCC,* 523 U.S. 1046 (1998) (hereinafter *Illinois*), the Commission established in this Order the amount of monthly per-payphone compensation for access charge and subscriber 800 calls, beginning November 7, 1996. This amount is $33.892 per payphone per month. The Commission also calculated the amount of monthly per-payphone compensation for 0+ calls during the period beginning November 7, 1996 through October 6, 1997 (sometimes called the interim period), if the payphone service provider was not otherwise compensated. This amount is $4.2747 per payphone per month, paid by the interexchange carrier presubscribed during the interim period.

2. In this Order, the Commission determined the rate of per-call compensation for inmate calls during the interim period, if the payphone service provider was not otherwise compensated. The interexchange carrier presubscribed during the interim period pays $0.229 per inmate call ''that otherwise would have been compensated.'' For example, if the policy or practice of the specific presubscribed interexchange carrier was not to pay compensation to a payphone service provider for a collect call from an inmate when the called party refused to accept charges for that particular call during the interim period, then the specific presubscribed interexchange carrier is not required now to pay compensation of $0.229 for that

particular inmate call. In addition, if the presubscribed interexchange carrier failed to retain the records of inmate calls originating during the interim period for which compensation now must be paid according to this Order, then that presubscribed interexchange carrier must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific payphone service provider to be compensated will be allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number.

3. For access code calls, subscriber 800 calls, inmate calls or 0+ calls, a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest. The payphone compensation for access code calls, subscriber 800 calls, inmate calls or 0+ calls decided in this Order is a default amount, used in the absence of a negotiated amount. The Commission concluded moreover that the duty to pay interim compensation should not be limited to carriers with annual toll revenue above $100 million, but should include all interexchange carriers and local exchange carriers to the extent that local exchange carriers receive compensable payphone calls. In addition, the Commission excluded resellers from direct payment obligations for interim compensation to eliminate some of the non-payment problems described in the *Second Reconsideration Order,* 66 FR 21105 (Apr. 27, 2001). *See also Third Reconsideration Order,* 67 FR 3621 (Jan. 25, 2002).

4. The Commission in this Order also designated the payphone compensation interest rate for the interim period and the period beginning October 7, 1997 through April 20, 1999 (sometimes called the intermediate period) as the applicable rate for refund obligations set by the Internal Revenue Service (IRS) pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621. Based on an IRS Revenue Ruling published December 26, 2001, in Appendix C of the Order, the Commission provided the interest rates applicable to payphone compensation beginning the last quarter of 1996 through March 31, 2002.

TABLE OF OVERPAYMENTS INTEREST RATES FROM OCTOBER 1, 1996 THROUGH DECEMBER 31, 1998

Oct. 1, 1996–Dec. 31, 1996	8%
Jan. 1, 1997–Mar. 31, 1997	8%
Apr. 1, 1997–Jun. 30, 1997	8%
Jul. 1, 1997–Sep. 30, 1997	8%
Oct. 1, 1997–Dec. 31, 1997	8%
Jan. 1, 1998–Mar. 31, 1998	8%
Apr. 1, 1998–Jun. 30, 1998	7%
Jul. 1, 1998–Sep. 30, 1998	7%
Oct. 1, 1998–Dec. 31, 1998	7%

TABLE OF NONCORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	7%
Apr. 1, 1999–Jun. 30, 1999	8%
Jul. 1, 1999–Sep. 30, 1999	8%
Oct. 1, 1999–Dec. 31, 1999	8%
Jan. 1, 2000–Mar. 31, 2000	8%
Apr. 1, 2000–Jun. 30, 2000	9%
Jul. 1, 2000–Sep. 30, 2000	9%
Oct. 1, 2000–Dec. 31, 2000	9%
Jan. 1, 2001–Mar. 31, 2001	9%
Apr. 1, 2001–Jun. 30, 2001	8%
Jul. 1, 2001–Sep. 30, 2001	7%
Oct. 1, 2001–Dec. 31, 2001	7%
Jan. 1, 2002–Mar. 31, 2002	6%

TABLE OF CORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	6%
Apr. 1, 1999–Jun. 30, 1999	7%
Jul. 1, 1999–Sep. 30, 1999	7%
Oct. 1, 1999–Dec. 31, 1999	7%
Jan. 1, 2000–Mar. 31, 2000	7%
Apr. 1, 2000–Jun. 30, 2000	8%
Jul. 1, 2000–Sep. 30, 2000	8%
Oct. 1, 2000–Dec. 31, 2000	8%
Jan. 1, 2001–Mar. 31, 2001	8%
Apr. 1, 2001–Jun. 30, 2001	7%
Jul. 1, 2001–Sep. 30, 2001	6%
Oct. 1, 2001–Dec. 31, 2001	6%
Jan. 1, 2002 –Mar. 31, 2002	5%

See Revenue Ruling 2001–63, 2001–52 Internal Revenue Bulletin (I.R.B.) 606 (Dec. 26, 2001), 2001 WL 1563674 (IRS RRU). For interest in subsequent quarters, interested parties must use subsequent IRS Revenue Rulings.

5. In the *First Report and Order,* 61 FR 52307 (Oct. 7, 1996), the Commission used annual toll revenue as a basis for allocation between the carriers of the duty to pay a specified amount per payphone per month as interim compensation. The court in *Illinois* rejected this allocation methodology and required that the compensation obligation be based on payment for the payphone services received by that particular carrier. Consequently, the Commission must establish a nexus between the allocation methodology and the number of payphone calls routed to a specific carrier. The Commission is still considering the numerous proposals for various allocation methodologies received in this proceeding, CC Docket No. 96–128. Comments filed in this proceeding analyzing various proposed allocation methodologies emphasized the lack of a nexus between each proposed allocation methodology and the number of payphone calls routed to any specific carrier. For this reason, in letters dated December 20, 2001, the Common Carrier Bureau requested that Qwest, Verizon, BellSouth and SBC submit, no later than January 22, 2002, the number of call attempts designated by coding digits of 27 (dumb payphone) or 70 (smart payphone), routed to an interexchange carrier point of presence or handled entirely by the Regional Bell Operating Company facilities, for 1997, 1998, and fiscal year 2001 (beginning October 1, 2000 and ending September 30, 2001). Now that the record in this proceeding was supplemented, this specific call tracking data should allow the Commission to determine an allocation of the per-payphone compensation obligations. The Commission realized that this would effectively defer the determination of compensation owed for the interim and intermediate periods until it establishes a reasonable allocation methodology. To avoid further delay, however, in establishing some of the preconditions for per-payphone compensation, and to provide the industry with some guidance as to how the Commission intends to proceed, the Commission decided to adopt this Order at this time.

6. The Commission will determine in a subsequent order the issue of offsets of interim and intermediate overpayments as contemplated in the *Third Report and Order,* 64 FR 13701 (Mar. 22, 1999), and additional issues remanded in *Illinois,* such as an allocation methodology for per-payphone compensation, and the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or operating division. *See Remand Public Notice,* 62 FR 43686 (Aug. 15, 1997).

Paperwork Reduction Act Analysis

7. This Order was analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. It contains no new or modified information collections subject to Office of Management and Budget review.

Supplemental Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* in CC Docket No. 96–128, 61 FR 31481 (June 20, 1996). The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order,* 61 FR 52307 (Oct. 7, 1996), the *First Reconsideration Order,* 61 FR 65341 (Dec. 12, 1996), the *Second Report and Order,* 62 FR 58659 (Oct. 30, 1997), and the *Third Report and Order,* 64 FR 13701 (Mar. 22, 1999).

9. This present Supplemental FRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

10. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the Order preceding the Supplemental FRFA, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

11. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * *'' In this Order, the Commission redetermined, pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in the *Illinois* decision, certain aspects of the per-payphone compensation that interexchange carriers (IXCs) and local exchange carriers (LECs) must pay to payphone service providers (PSPs). *Illinois,* 117 F.3d. at 555.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

12. The Commission received no comments in direct response to the FRFA in the *Third Report and Order.* The Commission believes that the rules as adopted in this Order minimize the burdens of the per-payphone compensation scheme to the benefit of all parties, including small entities. *See* ''Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered,'' *infra.*

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

13. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rules adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

14. The Commission included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. According to the most recent *Telephone Trends Report* data, 1,335 incumbent LECs reported that they were engaged in the provision of local exchange services. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001) (*Telephone Trends Report*), Table 5.3. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,037 or fewer providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

16. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier

services. *Telephone Trends Report,* Table 5.3. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 297 or fewer providers of competitive local exchange service are small entities that may be affected by the rules.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 ''Other Local Exchange Carriers'' reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report,* Table 5.3. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* Of the 60 ''Other Local Exchange Carriers,'' 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these companies that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of CAPS or ''Other Local Exchange Carriers'' that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer small entity ''Other Local Exchange Carriers'' that may be affected by the rules.

18. *Local Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report,* Table 5.3. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of local resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 86 or fewer small business local resellers that may be affected by the rules.

19. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report,* Table 5.3. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these toll resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of toll resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

20. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 758 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these PSPs that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

21. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 163 or fewer small entity interexchange carriers that may be affected by the rules.

22. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.

Telephone Trends Report, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these operator service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer small entity operator service providers that may be affected by the rules.

23. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report*, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these prepaid calling card providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of prepaid calling card providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer small business prepaid calling card providers that may be affected by the rules.

24. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. Under that SBA definition, such a business is small if it has $11 million or less in average annual receipts. 13 CFR 121.201, NAICS code 513340. According to the Commission's most recent *Telephone Trends Report data*, 21 carriers reported that they were engaged in the provision of satellite services. *Telephone Trends Report*, Table 5.3. Of these 21 carriers, 16 reported that they have 1,500 or fewer employees and five reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of satellite service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 16 or fewer small business satellite service carriers that may be affected by the rules.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 17 carriers reported that they were engaged in the provision of ''Other Toll Services.'' *Telephone Trends Report*, Table 5.3. Of these 17 carriers, 15 reported that they have 1,500 or fewer employees and two reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these ''Other Toll Carriers'' that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of ''Other Toll Carriers'' that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 15 or fewer small business ''Other Toll Carriers'' that may be affected by the rules.

26. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Paging or Cellular and Other Wireless Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513322. According to the Commission's most recent *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. *Telephone Trends Report*, Table 5.3. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

27. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996); see also 47 CFR 24.720(b). For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996). These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566 (July 22, 1994). No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97–82, *Second Report and Order*, 62 FR 55348 (Oct. 24, 1997). Based on this

information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F Block auctions, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *800 MHz and 900 MHz Specialized Mobile Radio Licensees*. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules.

29. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this Supplemental FRFA, the Commission uses the SBA's definition applicable to wireless companies, *i.e.*, an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules.

30. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

31. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not defined a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, the Commission utilizes the SBA's definition applicable to wireless companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

32. *39 GHz Licensees*. The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998). An additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id*. The SBA approved these regulations defining ''small entity'' in the context of 39 GHz auctions. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that there are 18 or fewer small entities that are 39 GHz licensees that may be affected by the rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. As mandated by the court in the *Illinois* decision, the Commission established in this Order a compensation scheme for inmate telephone service during the interim period, if the payphone service provider (PSP) was not otherwise compensated for its inmate service. In a correctional institution, the PSP presubscribes the inmate telephones to a specific interexchange carrier (IXC) pursuant to a contract between the PSP and the interexchange carrier. If this previously existing contract failed to establish a duty to count and track inmate calls for compensation purposes, or if the presubscribed IXC failed to retain its records of the number of compensable inmate calls originating during the interim period for which compensation now must be paid according to this Order, the Commission established a

waiver procedure that provides the maximum amount of flexibility for the presubscribed IXC and the PSP, including small IXCs and small PSPs, to propose the number of inmate calls to be compensated. According to this waiver provision, the IXC presubscribed during the interim period must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific PSP to be compensated is allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number. With this exception for those situations in which the number of compensable inmate calls for the interim period is not available, this Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. To minimize the economic impact and administrative burden for both payors and recipients of payphone compensation, including small entities, the Commission required the payment of a flat fee of $33.892 per payphone per month for access code and subscriber 800 calls originating from November 7, 1996 through October 6, 1997, for all payphones. For the same reason, the Commission also set compensation at a flat fee of $33.892 per payphone per month for access code and subscriber 800 calls originating from October 7, 1997 through April 20, 1999, for those payphones for which compensation is or was not paid on a per-call basis. The payment of a prescribed flat fee of $4.2747 per payphone per month for 0+ calls originating from November 7, 1996 through October 6, 1997, to PSPs that were not otherwise compensated for 0+ calls during the interim period, minimizes the economic impact and administrative burden for both IXCs and PSPs, including small entities.

35. Some of both payors and recipients of payphone compensation are small entities. Over time, the Commission learned that steps taken to minimize the economic impact on payors of payphone compensation that are small entities diminish the compensation received by recipients of payphone compensation that are small entities. This decrease in compensation contradicts one of the mandates of section 276 that PSPs should receive compensation for each and every completed call originating at one of their payphones. For example, to ease the burden of implementing the per-call payphone compensation scheme on midsize and small local exchange carriers, the Common Carrier Bureau granted a waiver in 1998 to relieve such entities of the economic burden of installing flexible automatic number identification (FlexANI) software on their switches. If the PSP uses ''smart'' payphones, the payphone calls of small PSPs routed through these particular switches lacking FlexANI software cannot be counted, tracked, and compensated on a per-call basis. As a result, compensation must be paid on a per-payphone, not per-call, basis. The Bureau limited such payphone compensation to 16 calls per month, even if a small payphone service provider's payphone calls are more than 200 calls per payphone per month at a truck stop, for example, instead of 16 payphone calls per month. *Bureau Per-call Waiver Order,* 63 FR 26497 (May 13, 1998). At a rate of $0.229 per payphone call as calculated in this Order, compensation would be limited to $3.664 per payphone per month starting on November 7, 1996 through April 20, 1999. At the rate of $0.24 per payphone call as calculated in the *Third Report and Order,* compensation would be limited to $3.84 per payphone per month after April 20, 1999. Accordingly, the Commission found it necessary in this Order to balance the equities between these two groups of small entities.

36. In another example of the Commission's attempt to ease an economic impact, in 1996 the Commission exempted LECs and IXCs with annual toll revenues of $100 million or less from the economic and administrative burdens of paying per-payphone compensation. The U.S. Court of Appeals for the District of Columbia Circuit vacated this determination as arbitrary and capricious in the *Illinois* decision, partially because it would deprive recipients of payphone compensation of approximately $4 million per month, according to the court. *Illinois,* 117 F.3d at 565. After the *Illinois* decision, the Commission was asked again to exempt carriers with annual toll revenues of $100 million or less from the economic and administrative burdens of paying interim compensation. In the alternative, the Commission was asked to exempt carriers with monthly toll revenues of $1 million or less from the economic and administrative burdens of paying interim compensation. In this Order, the Commission followed the mandates of the court in the *Illinois* decision and decided not to exempt carriers based on the amount of toll revenue.

Report to Congress

37. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Ordering Clauses

38. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, *It is ordered* that the policies, rules and requirements set forth herein *Are Adopted.*

39. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Fourth Order on Reconsideration and Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers,

Telecommunications, Telephone. Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218–220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Add § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated

agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for the period starting on November 7, 1996 and ending on October 6, 1997, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(b) *Interim 0+ calls.* In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of $4.2747 per payphone per month, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim inmate calls.* In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of $0.229 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, for the period starting on October 7, 1997 and ending on April 20, 1999.

(e) *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, on or after April 21, 1999.

[FR Doc. 02–4979 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[FCC 02–40]

Implementation of LPTV Digital Data Services Pilot Project

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the provisions of LPTV Pilot Project Digital Data Services Act, which requires the Commission to implement regulations establishing a pilot project. This document also clarifies and revises issues raised in a Petition for Response to Reconsideration of the Implementation Order filed by U.S. Interactive, L.L.C., d/b/a AccelerNet.

DATES: Effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Policy and Rules Division, Mass Media Bureau, (202) 418–2120; or Keith Larson, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (''*Order*'') in FCC 02–40, adopted February 12, 2002 and released February 14, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.*

Synopsis of Order

I. Introduction

1. In April, 2001 we released an *Order* implementing the provisions of the LPTV Pilot Project Digital Data Services Act (DDSA), (*Order,* In the Matter of Implementation of LPTV Digital Data Services Pilot Project, FCC 01–137, 66 FR 29040 (May 29, 2001)). The DDSA requires the Commission to issue regulations establishing a pilot project pursuant to which specified Low Power Television (LPTV) licensees or permittees can provide digital data services to demonstrate the feasibility of using LPTV stations to provide high-speed wireless digital data service, including Internet access, to unserved areas (Public Law 106–554, 114 Stat. 4577, December 21, 2000, Consolidated Appropriations—FY 2001, section 143, amending section 336 of the Communications Act of 1934, as amended, 47 U.S.C. 336, to add new subsection (h). 47 U.S.C. 336(h)(7)). As defined by the DDSA, digital data service includes: (1) Digitally-based interactive broadcast service; and (2) wireless Internet access (47 U.S.C. 336(h)(7)). The DDSA identifies twelve specific LPTV stations that are eligible to participate in the pilot project, and directs the Commission to select a station and repeaters to provide service to specified areas in Alaska. In this *Order,* we address issues raised in a petition for reconsideration of the *Order* filed by U.S. Interactive, L.L.C., d/b/a AccelerNet, and revise provisions of that *Order* in some respects. AccelerNet is an LPTV licensee providing one-way digital data service in Houston, Texas, from station KHLM–LP, and operating stations that are eligible to participate in DDSA pilot projects. Its investors own or have rights to acquire six of the other eight stations eligible for the pilot projects.

II. Discussion

A. Term of Pilot Project

2. In the *Order,* we noted that the DDSA does not specify how long the pilot project should last. Since the DDSA specified that our last report to Congress evaluating the utility of the pilot project is due on June 30, 2002, we clarified that we will issue experimental letter authorizations for the pilot project that will expire on June 30, 2002, unless the term is extended prior to that date. We delegated authority to the Mass Media Bureau to extend the term of the authorizations for individual participants or for participants as a group, and to do so by Public Notice, in the event that it is determined that the

term of the pilot project should be extended.

3. In its petition, AccelerNet asserts that the Commission should grant conditional pilot project licenses for the term of the underlying LPTV station license, including any renewals, subject only to early termination of the pilot project license if irremediable interference occurs, rather than experimental licenses. AccelerNet asserts that the statute implicitly requires the Commission to allow operation of the pilot projects on an indefinite basis, subject to termination only if interference occurs which cannot otherwise be remedied. According to AccelerNet, inclusion of a sunset provision in the *Order* would cause the demise of the project. It contends that investors are reluctant to finance pilot projects; that equipment manufacturers will not be willing to develop necessary equipment needed by the project; that several years will be needed to implement and demonstrate the utility of the project; and, finally, that the pilot project is intended to ultimately provide a needed service that should not be sunsetted if it works. To support its assertion, it first argues that Congress would not have provided for annual fees if the pilot projects were intended to be of limited duration. It observes that a provision in the statute at section 336(h)(6) for annual fees to be paid by stations participating in the pilot projects is similar to the provision for annual fees to be paid by digital television stations offering ancillary or supplementary services at section 336(e). Second, AccelerNet argues, although Congress expressly provided for termination under certain conditions, those conditions did not include a time limit (citing sections 336(h)(3)(C) (Commission to adopt regulations providing for termination or limitation of any pilot project station or remote transmitter if interference occurs to other users of the core television spectrum) and 336(h)(5)(A) (Commission may limit provision of digital data service from pilot project stations if interference is caused)). It contends that a sunset provision was considered and specifically rejected during drafting negotiations. (Asserting a sunset provision was specifically rejected when section 336(h) and the DDSA were legislated). Finally, AccelerNet argues, the statutory dates specified for the Commission to issue reports concerning the efficacy of the pilot projects are unrelated to any supposed term of the pilot projects. (The Commission was required to report back to Congress on June 30, 2001 and June 30, 2002. *See* section 336(h).) Rather, it claims, the reporting requirements exist to enable Congress to determine whether to expand the provision of digital data services to all or some additional portion of LPTV stations.

4. On reconsideration, we have decided to revise our provisions regarding the terms of the pilot project. Rather than issue experimental letter authorizations, the procedure we described in the *Order,* we will allow the LPTV stations that are eligible for the pilot project to participate in the pilot project for the term of their LPTV licenses, including renewals of those licenses, subject to early termination if irremediable interference occurs, pursuant to the statute.

5. Pursuant to § 74.731(g) of our rules, LPTV stations may operate as TV translator stations, or to originate programming and commercial matter, either through the retransmission of a TV broadcast signal or via original programming (47 CFR 74.731(g); *see* also 47 CFR 74.701(f)). To allow the pilot project stations to participate in the project, we will grant them a waiver of this rule (47 CFR 1.3, ''Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown''). The waiver will be renewable with the renewal of the underlying LPTV license. All other LPTV rules will be applicable to these stations, except as waived herein or upon request by pilot project participants, or as specified in the *Order.* (We will waive the following rules as inapplicable to the services provided under this pilot project: 47 CFR 74.731(g) (permissible service), 74.732(g) (booster eligibility), 74.736(a) (emissions), 74.750(a) (FCC transmitter certification), 74.751(a) (modification of transmission systems), 74.761 (frequency tolerance), and 74.763(c) (time of operation)).

6. As stated, this is a pilot project. Pilot project stations will operate pursuant to their LPTV licenses instead of experimental letter authorizations. To obtain a waiver of § 74.731(g), pilot project-eligible stations should follow the application procedures specified in paragraph 8 of the *Order.* Rather than filing an application for experimental authority, a DDSA-eligible applicant should file an informal letter application requesting the addition of digital data service pilot project facilities to its existing LPTV authorization and including the information requested in that paragraph. We will also require them to undertake the testing described in paragraph 10, and to include the information requested in that paragraph in their applications so that we may assess the interference potential of this service. No application filing fee is required to add or modify pilot project digital facilities. We will issue a waiver by letter adding pilot project facilities to the LPTV authorization for the term of the LPTV license, renewable with that license, after following the public notice procedures specified in paragraph 18 of the *Order.* Paragraph 19 of the *Implementation Order,* regarding facilities changes, will continue to apply. Applications to change channel or transmitter site location(s) must be filed in the normal manner on FCC Form 346, seeking a modified construction permit for the underlying analog facilities of the licensed LPTV station or a modification of such facilities in an existing analog LPTV station construction permit. The application for modification of analog facilities is feeable. Following grant of the change in such authorized LPTV facilities, an associated informal application to modify the pilot project portion of the authorization will be considered in accordance with the above procedures. This two step process is necessary because, where interference protection to digital data services is required, the protected area is that defined by the analog LPTV service contour (47 CFR 74.707(a)), based on the authorized analog LPTV facilities, an associated informal application to modify the pilot project portion of the authorization will be considered). All other requirements of the *Order* apply unless changed herein.

7. Additionally, and as AccelerNet observes, the DDSA specifies that a station may provide digital data service unless provision of the service causes interference in violation of the Commission's existing rules to full-service analog or digital television stations, Class A television stations, or television translator stations. In keeping with these provisions in the DDSA, we will not renew any waiver to operate pursuant to the pilot project if the station requesting renewal causes irremedial interference to other stations.

8. We find that it is in the public interest to grant these waivers generally based on the intent of Congress in the DDSA that it is in the public interest to establish this pilot project. In the *Order,* we stated that we would extend the term of the pilot projects, by Public Notice and on delegated authority, upon a determination that the term of the pilot project should be extended. We intended to use this process so that the original term of the pilot projects could be extended with minimal difficulty, and did not intend that the term would

automatically expire after June 30, 2002. Nonetheless, we recognize that the limited term specified in the *Order* could pose problems with establishing the project, as AccelerNet described, because investors may be unwilling to invest without greater certainty, particularly in the current challenging economic climate, and that it may take longer to develop the equipment than originally contemplated. It is also conceivable, as AccelerNet contends, that equipment manufacturers might be less willing to develop the equipment needed by the project without the certainty of a longer initial term. Moreover, as AccelerNet argues, it is possible that implementing and proving the practicality of the project could require a period of years. Accordingly, to assure that our procedures do not undermine the establishment of the pilot project, we will instead base the license terms of the pilot project stations on the terms of the underlying LPTV licenses and grant the necessary rule waivers, subject to the interference prohibitions in the statute and as delineated in the *Order.* (We wish to make clear that this is a pilot project, and the decisions made herein are not intended to prejudge any future decisions on digital operation on LPTV stations generally).

9. We recognize that Congress wanted to give the pilot project a fair opportunity to succeed. The DDSA does not contain a sunset date; it is, therefore, legally permissible to make the term of the pilot project coincident with the term of the LPTV license, subject to early termination in the event of irremediable interference. (Although Congress specified particular subjects for which it wanted the Commission to issue rules in section 336(h)(3), that section does not direct the Commission to issue a sunset rule for the pilot projects. Likewise, no time limitation is specified in sections 336(h)(1), which allows pilot project stations to ask the Commission to provide digital data service or in section 336(h)(5)(b), which allows a licensee to move a station to another location for the purpose of the pilot projects). Our goal is to implement the statute while assuring that no objectionable interference occurs. Granting renewable waivers is not overly burdensome to participants in the pilot project, and it serves the purpose of ensuring that others are protected from interference.

10. To assure that the project does not cause interference, we will not only assess issues of interference that may arise in connection with the filing of the renewal application, but in addition the interference resolution provisions of paragraph 11 of the *Order* will apply. Paragraph 11 requires stations participating in the pilot project to comply with § 74.703 of the Commission's rules regarding interference. It also specifies additional procedures that participating stations must follow in order to resolve interference problems in accordance with requirements set forth in the DDSA). We clarify that we have authority to take any measures, including terminating digital data service waivers and therefore requiring the discontinuance of the participation of any station in the project in the event of irremediable interference. LPTV stations are secondary and must provide interference protection as described in paragraph 8 of the *Order.* The waivers will be conditioned accordingly.

B. Application of Experimental Rules

11. In the *Order,* we stated our belief that requirements similar to those contained in §§ 5.93(a) and (b) of the rules should apply to the pilot program. (No other provisions of part 5 of the Commission's rules were applied). Thus, we required that all transmitting and/or receiving equipment used in the pilot program be owned by, leased to, or otherwise under the control of the LPTV licensee (47 CFR 5.93(a)). We said that response station equipment may not be owned by subscribers to the experimental data service to insure that the LPTV licensee has control of the equipment if and when the pilot program terminates. In addition, we required the LPTV licensee to inform anyone participating in the experiment, including but not limited to subscribers or consumers, that the service or device is provided pursuant to a pilot program and is temporary (47 CFR 5.93(b)).

12. AccelerNet argues that the requirement that all transmitting and receiving equipment be owned by the licensee is unwarranted and not required or contemplated by the DDSA. It also objects to the requirement that the LPTV licensee shall inform anyone participating in the project that the service is temporary. These requirements were necessary under our rules governing experimental licensees. Because we are, on reconsideration, treating this endeavor not as an experimental project with an initial term of only 2 years, but as a unique pilot project that is a part of the underlying LPTV license and is for the term of that license, §§ 5.93(a) and (b) are no longer applicable because there is no longer the concern that the project will be terminated after only 2 years. We do not intend to unnecessarily restrict the ability of the pilot projects to gain market acceptance, make it difficult for the licensees to gauge subscriber acceptance of the service, or be unduly burdensome considering the other risks assumed by licensees in a pilot project. We will require pilot project licensees and permittees to advise recipients of digital data service that they are participating in a pilot project, which could be terminated in the event of irremedial interference to protected broadcast and other services. AccelerNet has stated that it has no objection to this requirement.

C. RF Safety Rules

13. In the *Order,* we said that we will require pilot project licensees and permittees employing two-way technology to attach labels to every response station transceiver (fixed or portable) in a conspicuous fashion visible in all directions and readable at distances beyond the minimum separation distances between the radiating equipment and the user. For fixed response stations, we also concluded that their effective radiated power (ERP) should be as low as is consistent with satisfactory communication with a base station, and in no case should the ERP (digital average power) exceed 10 watts. For portable response stations, we similarly concluded that their ERP should be as low as is consistent with satisfactory communication with a base station, and in no case should the ERP (digital average power) exceed 3 watts.

14. *Labeling.* AccelerNet argues that the requirement that RF station transceivers be marked to indicate potential radio frequency hazards should not apply where the transmit power of the transceiver is so low as to present no safety hazard at any distance. It contends that requiring marking in those circumstances is overregulatory, and could unnecessarily raise concerns among potential subscribers, causing the pilot project to fail from lack of consumer acceptance. Arguing that its portable devices are not expected to exceed one watt in power, it contends that the Commission's current rules sufficiently protect the public (citing 47 CFR 2.10093 [''Radiofrequency radiation exposure evaluation; portable devices.'']). It argues that the *Order* should be revised to provide that portable devices shall comply with the provisions of § 2.1093 of the Commission's rules (47 CFR 2.1093), including the radiation exposure limitations set forth in § 2.1093(d)(2).

15. We agree with the petitioner that RF safety rules for digital data service devices should be consistent with existing rules for similar devices.

However, similar devices that are used as subscriber transceivers and marketed to the public have been subject to labeling requirements to alert consumers to the presence of RF energy and to ensure that safe distances from transmitting antennas are maintained (47 CFR 1.1307(b)). Such devices have generally been classified as ''mobile'' devices under our rules, not as ''portable'' devices. For purposes of determining how to evaluate RF devices for compliance with the Commission's RF safety rules, non-fixed devices have been classified as either ''mobile'' or ''portable,'' based on the separation distance between radiating structures and users (this is defined in 47 CFR 2.1091 and 2.1093 and is discussed in the FCC's OET Bulletin 65, (1997)). A classification of ''mobile'' means that compliance with the Commission's RF safety rules can be accomplished by providing users with information on safe distances to maintain from transmitting antennas in order to meet field intensity limits for Maximum Permissible Exposure (MPE).

16. The petitioner proposes to have digital data service devices be subject to the provisions of § 2.1093, the section of our rules which specifies requirements for devices classified as ''portable'' in terms of compliance with the Commission's limits for localized Specific Absorption Rate (SAR). For a device to be classified as ''portable'' it is assumed that it is possible for the separation distance between the radiating structure of the device and a user to be less than 20 cm during transmit operation. Compliance with the SAR limit (the general population limit of 1.6 watts per kilogram in this case) is typically determined by means of laboratory testing (*see* Supplement C (2001) to the FCC's OET Bulletin 65 (1997) for details). We agree that the response stations used in connection with the pilot project can be classified as ''portable'' devices and subject to the provisions of § 2.1093, as long as the appropriate SAR data are obtained and made available to the Commission demonstrating compliance with the SAR limit. A determination of ''worst case'' exposure would be indicated by evaluating SAR with a zero separation distance. If compliance with the SAR limit is demonstrated in this condition, using maximum operating power, then labeling would not be required, since no separation distance would be required for compliance. On the other hand, if a certain separation distance (less than 20 cm) is required for compliance with the SAR limit, then the applicant will have to demonstrate that a user cannot be exposed closer than that distance.

17. Accordingly, we will require portable response stations used in connection with the pilot project to comply with the RF exposure limits and related provisions of § 2.1093 of our rules, relevant to devices subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. Although we have not required that these devices be subject to equipment authorization, applicants must submit to the Commission evidence of compliance with the SAR limits specified in § 2.1093, including information on how any required separation distances, as discussed above, will be maintained. Based on our previous experience in analyzing SAR from portable devices, we will not require SAR testing and will categorically exclude from routine RF evaluation devices that do not radiate a power level in excess of 50 milliwatts.

D. Technical Operation

18. In the *Order,* we anticipate the possibility that several types of transmission facilities may be involved in each pilot project station. First, we expect that most, if not all, of these projects will involve digital transmissions from a main base station at the authorized site of the underlying LPTV station. Unless the evaluation of its digital modulation method requires otherwise, we would assume that operation of such a facility will not represent a significantly increased interference threat compared to the authorized LPTV station if the antenna height is not increased and the digital average power does not exceed 10 percent of the authorized analog LPTV power (10 dB less power). We noted that in DTV service, this level of digital power is adequate to provide coverage of the same area. We said that the Commission's staff will not evaluate at the application stage the interference potential of a main digital base station conforming to this restriction.

19. In the *Order,* we said that the second type of transmission facility might consist of one or more additional base stations (boosters) located at sites away from the authorized LPTV transmitter site. We decided to treat such stations as we treat analog TV booster stations except that each booster may originate its own data messages. As such, we noted our expectation that such facilities would be limited to a site location, power and antenna height combination that would not extend the coverage area of the main base station in any direction. We stated that we would require an exhibit demonstrating that booster coverage is contained within main base station coverage, based on the digital field strength predicted from the main base station at the protected contour of the underlying analog LPTV authorization. Further, we stated that we would assume at the application stage that such an operation will not cause additional interference unless an interference situation is demonstrated in an informal objection to the application. We said that, absent such an objection, the Commission's staff will not evaluate at the application stage the interference potential of an additional digital base station conforming to this restriction.

20. *Digital Power Issue.* AccelerNet asks the Commission to allow UHF LPTV pilot project stations to transmit with up to 15kW average digital power if existing interference protection criteria are met. AccelerNet argues that the provision in the *Order* could be read to limit average digital power to 10 percent of the authorized analog power of the underlying LPTV station. It states that discussion with staff indicates that this was not intended, and asks that the Commission clarify that this is the case. It adds that a 10 percent limit would be an unjustified restriction on provision of its service, because, under the rules, UHF LPTV stations are limited to 15 kW average digital power if existing interference protection criteria are met (47 CFR 74.735(b)(2)). It asks that the *Order* be clarified to allow operation up to 15 kW average digital power if existing interference protection criteria are met.

21. *Boosters.* AccelerNet urges the Commission to allow booster stations to operate at any point within the existing authorized coverage contours of the main base station, provided that no interference to protected stations would be created. It asks that some degree of flexibility be provided for the location of booster stations to allow LPTV stations to cover natural market areas associated with their communities of license, but which may be outside their existing coverage contours. It suggests that booster stations be allowed to operate at any point within the existing authorized coverage contours of the main base station, provided that no interference to protected stations would be created, and provided that the pilot project stations would not be entitled to interference protection outside their existing authorized service contours of the underlying analog LPTV authorization.

22. On reconsideration of both these issues, we reach the same conclusion, of which there are two parts. First we deal with the interference protection that must be afforded to the LPTV stations

participating in this pilot project. Second, we deal with the interference protection that pilot project stations must afford to all other stations that are entitled to protection.

23. Interference protection of a pilot project station will be limited to the analog TV protected contour of the underlying LPTV station. That underlying LPTV station authorization may be modified in accordance with the LPTV rules and procedures. When and if the LPTV rules are amended to allow digital LPTV authorizations, the underlying analog LPTV station may be converted to a digital LPTV authorization in accordance with those rules. Pilot project authorizations for digital power in excess of 10 percent of the underlying analog LPTV station power will not entitle the station to any additional interference protection. Similarly, booster station authorizations that may allow the pilot project station to provide service in areas beyond the underlying LPTV protected contour will not entitle the pilot project station to additional interference protection.

24. As requested, we clarify that a pilot project station is not limited to an effective radiated power that is 10 percent or less than that of the analog power of the associated LPTV station. A pilot project station will be assumed at the application stage to provide the required interference protection to other stations if it conforms to the 10 percent of the LPTV analog power criterion and any booster stations do not extend the analog LPTV authorized protected contour. Requests for greater pilot project power, up to the 15 kilowatt effective radiated power limit for UHF digital LPTV stations, or for boosters located within the analog LPTV protected contour extending the pilot project service beyond the analog protected contour, must include a showing that no interference is predicted to any other service that is entitled to protection. (The digital effective radiated power limit in the LPTV rules for VHF station is 300 watts (47 CFR 74.735(b)(1)). Pilot project booster stations may be located anywhere within the protected contour of the underlying analog LPTV authorization based on a showing of noninterference to protected stations. On this basis we will not prohibit a booster from extending service beyond the protected contour.

III. Administrative Matters

25. *Paperwork Reduction Act Analysis*. This *Order on Reconsideration* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Order*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due May 3, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov*.

26. *Final Regulatory Flexibility Analysis*. No regulatory flexibility analysis is required because the rules adopted in the *Order* and this *Order on Reconsideration* were adopted without notice and comment rule making.

27. *Congressional Review Act*. These rules, promulgated without notice and comment rule making, are not subject to the provisions of the Congressional Review Act.

IV. Ordering Clauses

28. Pursuant to the authority contained in sections 1, 2(a), 4(i), 7, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 1, 2(a), 4(i), 7 and 336, part 74 of the Commission's rules, 47 CFR part 74, *is amended* as set forth.

29. The rule amendments set forth *shall be effective February 14, 2002*.

30. The petition for reconsideration filed by U.S. Interactive, L.L.C., *is granted* to the extent discussed herein, and otherwise is *denied*.

31. This proceeding is *terminated*.

List of Subjects in 47 CFR Part 74

Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

Subpart G—Low Power TV, TV Translator, and TV Booster Stations is amended to read as follows:

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

2. Section 74.785 is revised to read as follows:

§ 74.785 Low power TV digital data service pilot project.

Low power TV stations authorized pursuant to the LPTV Digital Data Services Act (Public Law 106–554, 114 Stat. 4577, December 1, 2000) to participate in a digital data service pilot project shall be subject to the provisions of the Commission *Order* implementing that Act. FCC 01–137, adopted April 19, 2001, as modified by the Commission *Order on Reconsideration*, FCC 02–40, adopted February 12, 2002.

[FR Doc. 02–4978 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 42
Monday, March 4, 2002

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206–AJ51

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to aid agencies and employees responding to the ''National Emergency by Reason of Certain Terrorist Attacks'' on the World Trade Center and the Pentagon. The regulations provide that employees who forfeit excess annual leave because of their work to support the Nation during this national emergency are deemed to have scheduled their excess annual leave in advance. Such employees are entitled to restoration of their annual leave under these regulations.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–4264, or e-mail: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2001, President Bush declared a ''National Emergency by Reason of Certain Terrorist Attacks'' on the World Trade Center and the Pentagon. On November 2, 2001, the Office of Personnel Management (OPM) published interim regulations (66 FR 5557) to provide relief to Federal employees who otherwise would have forfeited excess annual leave at the end of the leave year because of their involvement in efforts connected with the national emergency. The interim regulations became effective on December 3, 2001. Many agencies are involved in activities vital to our Nation as a result of the unprecedented events of September 11, 2001, the efforts toward recovery and response, and the continuing threat of further attacks on the United States. As a result, many Federal employees involved in these activities were unable to schedule and use excess annual leave and would have forfeited that leave at the end of the leave year. The interim regulations simplified the restoration of these employees' forfeited annual leave and imposed relaxed time limitations for using restored annual leave.

The 60-day comment period ended on January 2, 2002. We received no formal comments from either agencies or individuals. In informal comments, agency representatives expressed their satisfaction with the regulations. As a result, we believe no changes are necessary in the interim regulations. Therefore, we are adopting as final the interim rule providing that excess annual leave forfeited by employees who were unable to schedule and use their leave due to their involvement in national emergency efforts is deemed to have been scheduled in advance and therefore eligible for restoration.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, under the authority of 5 U.S.C. 6304(d)(2), the Office of Personnel Management adopts the interim regulations amending subpart C of 5 CFR part 630, published at 66 FR 55557 on November 2, 2001, as final.

[FR Doc. 02–5063 Filed 3–1–02; 8:45 am]

BILLING CODE 6325–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB93

Loan Policies and Operations; Definitions; Loan Purchases and Sales; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 614 and 619 on January 10, 2002 (67 FR 1281). This final rule will enable Farm Credit System (FCS or System) institutions to better use existing statutory authority for loan participations by eliminating unnecessary regulatory restrictions that may have impeded effective participation relationships between System institutions and non-System lenders. We believe that these regulatory changes will improve the risk management capabilities of both System and non-System lenders and thereby, enhance the availability of reliable and competitive credit for agriculture and rural America. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 2002.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614 and 619 published on January 10, 2002 (67 FR 1281) is effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 27, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–5093 Filed 3–1–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–39–AD; Amendment 39–12668; AD 2002–04–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines, that currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action modifies the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This amendment is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date April 8, 2002.

ADDRESSES: The information referenced in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding (AD) 2000–08–10, Amendment 39–11696 (65 FR 21642, April 24, 2000), that is applicable to General Electric GE90 series turbofan engines was published in the **Federal Register** on October 10, 2001 (66 FR 51607). That action proposed to modifiy the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11696 (65 FR 21642, April 24, 2000), and by adding a new airworthiness directive, Amendment 39–12668 to read as follows:

AD 2002–04–11 General Electric Company: Docket No. 98–ANE–39–AD. Supersedes AD 2000–08–10, Amendment 39–11696.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B/ –77B/ –85B/ –90B/ –94B series turbofan engines. These engines are installed on but not limited to Boeing 777 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part no. (P/N)	Inspect per engine manual chapter
For GE90 Engines:		

Part nomenclature	Part no. (P/N)	Inspect per engine manual chapter
HPCR Disk, Stage 1	All	72–31–05–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–05–230–051), and 72–31–05–200–001–001 Eddy Current Inspection of the Bore, and 72–31–05–200–001–001 Eddy Current Inspection of the Dovetail Slots.
HPCR Spool, Stage 2–6	All	72–31–06–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–06–230–051), and 72–31–06–200–001–001 Eddy Current Inspection of the S2 Dovetail Slots.
HPCR, Disk, Stage 7	All	72–31–07–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–07–230–051), and 72–31–07–200–001–001 Eddy Current Inspection (subtask 72–31–07–250–051 or 72–31–07–230–052 or 72–31–07–230–053.
HPCR Spool, Stage 8–10.	All	72–31–08–200–001–001 Fluorescent Penetrant Inspection and 72–31–08–800–001 Eddy Current Inspection of the stage 8–9 inertia weld.
HPCR Seal, Compressor Discharge Pressure.	All	72–31–09–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–09–230–051), and 72–31–09–200–001–001 Eddy Current Inspection of the Boltholes.
HPCR Ring, Tube Supporter.	All	72–31–10–200–001–001 Fluorescent Penetrant Inspection.
HPTR, Interstage Seal ..	All	72–53–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–53–03–230–053), and 72–53–03–200–001–001 Eddy Current Inspection of the Bore.
Fan Disk, Stage 1	All	72–21–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–21–03–230–051), and 72–21–03–200–001–001 Eddy Current of the bore, and 72–21–03–200–001–001 Ultrasonic Inspection of Dovetail Slots.
HPTR Disk, Stage 1	All	72–53–02–200–001–002 Fluorescent Penetrant Inspection (subtask 72–53–02–160–051), and 72–53–02–200–001–002 Eddy Current Inspection of the Bore.
HPTR Disk, Stage 2	All	72–53–04–200–001–004 Fluorescent Penetrant Inspection (subtask 72–53–04–230–052), and 72–53–04–200–001–004 Eddy Current Inspection of the Bore.
LPTR Cone Shaft	All	72–56–07–200–001–001 Fluorescent Penetrant Inspection.
LPTR Fan Mid Shaft	All	72–58–01–200–001–001 Magnetic Particle Inspection.
LPTR Disk, Stage 1	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 2	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 3	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 4	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 5	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
LPTR Disk, Stage 6	All	72–56–02–200–001–001 Fluorescent Penetrant Inspection.
Fan Shaft, Forward	All	72–22–01–200–001–001 Fluorescent Penetrant Inspection.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the ICA and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however,

the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Effective Date

(f) This amendment becomes effective on April 8, 2002.

Issued in Burlington, Massachusetts, on February 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–5003 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040

Change in the Removal of the Office of Management and Budget (OMB) Control Numbers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the removal of OMB control numbers. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040 to reflect a change in the removal of the outdated OMB control numbers. We no longer need to publish OMB control numbers in the CFR, because they are now displayed in a separate **Federal Register** notice announcing OMB approval for the collection of information.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 680

Biologics, Blood, Reporting and recordkeeping requirements.

21 CFR Part 720

Confidential business information, Cosmetics.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

21 CFR Part 1040

Electronic products, Labeling, Lasers, Medical devices, Radiation protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 56, 58, 60, 101, 107, 179, 310, 312, 314, 510, 514, 606, 610, 640, 660, 680, 720, 814, 1020, and 1040 are amended as follows:

PART 56—INSTITUTIONAL REVIEW BOARDS

1. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 56.108 [Amended]

2. In § 56.108 *IRB functions and operations*, remove the parenthetical phrase at the end of the section.

§ 56.115 [Amended]

3. In § 56.115 *IRB records*, remove the parenthetical phrase at the end of the section.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

4. The authority citation for 21 CFR part 58 continues to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

§ 58.35 [Amended]

5. In § 58.35 *Quality assurance unit*, remove the parenthetical phrase at the end of the section.

§ 58.63 [Amended]

6. In § 58.63 *Maintenance and calibration of equipment*, remove the parenthetical phrase at the end of the section.

§ 58.90 [Amended]

7. In § 58.90 *Animal care*, remove the parenthetical phrase at the end of the section.

§ 58.105 [Amended]

8. In § 58.105 *Test and control article characterization*, remove the parenthetical phrase at the end of the section.

§ 58.120 [Amended]

9. In § 58.120 *Protocol*, remove the parenthetical phrase at the end of the section.

§ 58.130 [Amended]

10. In § 58.130 *Conduct of a nonclinical laboratory study*, remove the parenthetical phrase at the end of the section.

§ 58.190 [Amended]

11. In § 58.190 *Storage and retrieval of records and data*, remove the parenthetical phrase at the end of the section.

PART 60—PATENT TERM RESTORATION

12. The authority citation for 21 CFR part 60 continues to read as follows:

Authority: 21 U.S.C. 348, 355, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

§ 60.24 [Amended]

13. In § 60.24 *Revision of regulatory review period determinations*, remove the parenthetical phrase at the end of the section.

§ 60.30 [Amended]

14. In § 60.30 *Filing, format, and content of petitions*, remove the parenthetical phrase at the end of the section.

§ 60.40 [Amended]

15. In § 60.40 *Request for hearing*, remove the parenthetical phrase at the end of the section.

PART 101—FOOD LABELING

16. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.69 [Amended]

17. In § 101.69 *Petitions for nutrient content claims*, remove the parenthetical phrase at the end of the section.

PART 107—INFANT FORMULA

18. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

§ 107.10 [Amended]

19. In § 107.10 *Nutrient information*, remove the parenthetical phrase at the end of the section.

§ 107.20 [Amended]

20. In § 107.20 *Directions for use*, remove the parenthetical phrase at the end of the section.

§ 107.50 [Amended]

21. In § 107.50 *Terms and conditions*, remove the parenthetical phrase at the end of the section.

§ 107.280 [Amended]

22. In § 107.280 *Records retention*, remove the parenthetical phrase at the end of the section.

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

23. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

§ 179.25 [Amended]

24. In § 179.25 *General provisions for food irradiation*, remove the parenthetical phrase at the end of the section.

PART 310—NEW DRUGS

25. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.305 [Amended]

26. In § 310.305 *Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications*, remove the parenthetical phrase at the end of the section.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

27. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.7 [Amended]

28. In § 312.7 *Promotion and charging for investigational drugs*, remove the parenthetical phrase at the end of the section.

§ 312.10 [Amended]

29. In § 312.10 *Waivers*, remove the parenthetical phrase at the end of the section.

§ 312.23 [Amended]

30. In § 312.23 *IND content and format*, remove the parenthetical phrase at the end of the section.

§ 312.30 [Amended]

31. In § 312.30 *Protocol amendments*, remove the parenthetical phrase at the end of the section.

§ 312.31 [Amended]

32. In § 312.31 *Information amendments*, remove the parenthetical phrase at the end of the section.

§ 312.32 [Amended]

33. In § 312.32 *IND safety reports*, remove the parenthetical phrase at the end of the section.

§ 312.33 [Amended]

34. In § 312.33 *Annual reports*, remove the parenthetical phrase at the end of the section.

§ 312.35 [Amended]

35. In § 312.35 *Submissions for treatment use*, remove the parenthetical phrase at the end of the section.

§ 312.36 [Amended]

36. In § 312.36 *Emergency use of an investigational new drug*, remove the parenthetical phrase at the end of the section.

§ 312.38 [Amended]

37. In § 312.38 *Withdrawal of an IND*, remove the parenthetical phrase at the end of the section.

§ 312.41 [Amended]

38. In § 312.41 *Comment and advice on an IND*, remove the parenthetical phrase at the end of the section.

§ 312.44 [Amended]

39. In § 312.44 *Termination*, remove the parenthetical phrase at the end of the section.

§ 312.45 [Amended]

40. In § 312.45 *Inactive status*, remove the parenthetical phrase at the end of the section.

§ 312.47 [Amended]

41. In § 312.47 *Meetings*, remove the parenthetical phrase at the end of the section.

§ 312.53 [Amended]

42. In § 312.53 *Selecting investigators and monitors*, remove the parenthetical phrase at the end of the section.

§ 312.55 [Amended]

43. In § 312.55 *Informing investigators*, remove the parenthetical phrase at the end of the section.

§ 312.56 [Amended]

44. In § 312.56 *Review of ongoing investigations*, remove the parenthetical phrase at the end of the section.

§ 312.57 [Amended]

45. In § 312.57 *Recordkeeping and record retention*, remove the parenthetical phrase at the end of the section.

§ 312.59 [Amended]

46. In § 312.59 *Disposition of unused supply of investigational drug*, remove the parenthetical phrase at the end of the section.

§ 312.62 [Amended]

47. In § 312.62 *Investigator recordkeeping and record retention*, remove the parenthetical phrase at the end of the section.

§ 312.64 [Amended]

48. In § 312.64 *Investigator reports*, remove the parenthetical phrase at the end of the section.

§ 312.66 [Amended]

49. In § 312.66 *Assurance of IRB review*, remove the parenthetical phrase at the end of the section.

§ 312.70 [Amended]

50. In § 312.70 *Disqualification of a clinical investigator*, remove the parenthetical phrase at the end of the section.

§ 312.110 [Amended]

51. In § 312.110 *Import and export requirements*, remove the parenthetical phrase at the end of the section.

§ 312.120 [Amended]

52. In § 312.120 *Foreign clinical studies not conducted under an IND*, remove the parenthetical phrase at the end of the section.

§ 312.140 [Amended]

53. In § 312.140 *Address for correspondence*, remove the parenthetical phrase at the end of the section.

§ 312.160 [Amended]

54. In § 312.160 *Drugs for investigational use in laboratory research animals or in vitro tests*, remove the parenthetical phrase at the end of the section.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

55. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.50 [Amended]

56. In § 314.50 *Content and format of an application*, remove the parenthetical phrase at the end of the section.

§ 314.70 [Amended]

57. In § 314.70 *Supplements and other changes to an approved application*, remove the parenthetical phrase at the end of the section.

§ 314.71 [Amended]

58. In § 314.71 *Procedures for submission of a supplement to an approved application*, remove the parenthetical phrase at the end of the section.

§ 314.72 [Amended]

59. In § 314.72 *Changes in ownership of an application*, remove the parenthetical phrase at the end of the section.

§ 314.80 [Amended]

60. In § 314.80 *Postmarketing reporting of adverse drug experiences*, remove the parenthetical phrase at the end of the section.

§ 314.90 [Amended]

61. In § 314.90 *Waivers*, remove the parenthetical phrase at the end of the section

§ 314.126 [Amended]

62. In § 314.126 *Adequate and well-controlled studies*, remove the parenthetical phrase at the end of the section.

§ 314.200 [Amended]

63. In § 314.200 *Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing*, remove the parenthetical phrase at the end of the section.

§ 314.420 [Amended]

64. In § 314.420 *Drug master files*, remove the parenthetical phrase at the end of the section.

PART 510—NEW ANIMAL DRUGS

65. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.455 [Amended]

66. In § 510.455 *New animal drug requirements regarding free-choice administration in feeds*, remove the parenthetical phrase at the end of the section.

PART 514—NEW ANIMAL DRUG APPLICATIONS

67. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

§ 514.1 [Amended]

68. In § 514.1 *Applications*, remove the parenthetical phrase at the end of the section.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

69. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

§ 606.170 [Amended]

70. In § 606.170 *Adverse reaction file*, remove the parenthetical phrase at the end of the section.

PART 610—GENERAL BIOLOGICAL PRODUCTS

71. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.2 [Amended]

72. In § 610.2 *Requests for samples and protocols; official release*, remove the parenthetical phrase at the end of the section

§ 610.12 [Amended]

73. In § 610.12 *Sterility*, remove the parenthetical phrase at the end of the section.

§ 610.13 [Amended]

74. In § 610.13 *Purity*, remove the parenthetical phrase at the end of the section.

§ 610.18 [Amended]

75. In § 610.18 *Cultures*, remove the parenthetical phrase at the end of the section.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

76. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.2 [Amended]

77. In § 640.2 *General requirements*, remove the parenthetical phrase at the end of the section

§ 640.72 [Amended]

78. In § 640.72 *Records*, remove the parenthetical phrase at the end of the section.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

79. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 660.21 [Amended]

80. In § 660.21 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.22 [Amended]

81. In § 660.22 *Potency requirements with reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.25 [Amended]

82. In § 660.25 *Potency tests without reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.26 [Amended]

83. In § 660.26 *Specificity tests and avidity tests*, remove the parenthetical phrase at the end of the section.

§ 660.28 [Amended]

84. In § 660.28 *Labeling*, remove the parenthetical phrase at the end of the section.

§ 660.34 [Amended]

85. In § 660.34 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.35 [Amended]

86. In § 660.35 *Labeling*, remove the parenthetical phrase at the end of the section.

§ 660.36 [Amended]

87. In § 660.36 *Samples and protocols*, remove the parenthetical phrase at the end of the section.

§ 660.51 [Amended]

88. In § 660.51 *Processing*, remove the parenthetical phrase at the end of the section.

§ 660.52 [Amended]

89. In § 660.52 *Reference preparations*, remove the parenthetical phrase at the end of the section.

§ 660.53 [Amended]

90. In § 660.53 *Controls for serological procedures*, remove the parenthetical phrase at the end of the section.

§ 660.54 [Amended]

91. In § 660.54 *Potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties*, remove the parenthetical phrase at the end of the section.

§ 660.55 [Amended]

92. In § 660.55 *Labeling*, remove the parenthetical phrase at the end of the section.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

93. The authority citation for 21 CFR part 680 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 680.1 [Amended]

94. In § 680.1 *Allergenic products*, remove the parenthetical phrase at the end of the section.

§ 680.2 [Amended]

95. In § 680.2 *Manufacture of allergenic products*, remove the parenthetical phrase in paragraph (f) of this section.

§ 680.3 [Amended]

96. In § 680.3 *Tests*, remove the parenthetical phrase at the end of the section.

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

97. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

§ 720.6 [Amended]

98. In § 720.6 *Amendments to statement*, remove the parenthetical phrase at the end of the section.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

99. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

§ 814.20 [Amended]

100. In § 814.20 *Application*, remove the parenthetical phrase at the end of the section.

§ 814.39 [Amended]

101. In § 814.39 *PMA supplements*, remove the parenthetical phrase at the end of the section.

§ 814.84 [Amended]

102. In § 814.84 *Reports*, remove the parenthetical phrase at the end of the section.

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

103. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

§ 1020.33 [Amended]

104. In § 1020.33 *Computed tomography (CT) equipment*, remove the parenthetical phrase at the end of the section.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

105. The authority citation for 21 CFR part 1040 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

§ 1040.20 [Amended]

106. In § 1040.20 *Sunlamp products and ultraviolet lamps intended for use in sunlamp products*, remove the

parenthetical phrase at the end of the section.

Dated: February 20, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4962 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Pittsburgh-02–001

RIN 2115–AA97

Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all water extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect the PPG Plant in Natrium, West Virginia from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the PPG Plant. Entry of vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

DATES: This rule is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh-02–001] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The catastrophic nature of, and resulting devastation from, the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington D.C., makes this rulemaking necessary for the protection of national security interests. National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To enhance that security the Captain of the Port, Pittsburgh is establishing a temporary security zone.

This security zone includes all water extending 200 feet from the shoreline of the left descending bank on the Ohio River beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect the public, facilities, and surrounding area from possible acts of terrorism at the PPG Plant. All vessels and persons are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone and vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Brian Smith, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644–5808.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–009 is added to read as follows:

§ 165.T08–009 Security Zone; Ohio River Miles 119.0 to 119.8, Natrium, West Virginia.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 119.0 and ending at mile marker 119.8.

(b) *Effective date.* This section is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

(c) *Authority.* The authority for this section is 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–1(g), and 49 CFR 1.46.

(d) *Regulations.* (1) Entry into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (412) 644–5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 8, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 02–5090 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Pittsburgh–02–002

RIN 2115–AA97

Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing all water extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the First Energy Nuclear Power Plant in Shippingport, Pennsylvania from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the First Energy Nuclear Power Plant. Entry of vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

DATES: This rule is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh–02–002] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists

for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The catastrophic nature of, and resulting devastation from, the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington DC, makes this rulemaking necessary for the protection of national security interests. National security and intelligence officials warn that future terrorist attacks against United States interests are likely. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To enhance that security the Captain of the Port, Pittsburgh is establishing a temporary security zone.

This security zone includes all water extending 200 feet from the shoreline of the left descending bank on the Ohio River beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the public, facilities, and surrounding area from possible acts of terrorism at the First Energy Nuclear Power Plant. All vessels are prohibited from entering the zone without the permission of the Captain of the Port Pittsburgh.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone and vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Brian Smith, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644–5808.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–010 is added to read as follows:

§ 165.T08–010 Security Zone; Ohio River Miles 34.6 to 35.1, Shippingport, Pennsylvania.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 34.6 and ending at mile marker 35.1.

(b) *Effective date.* This section is effective from 8 a.m. on February 8, 2002 through 8 a.m. on June 15, 2002.

(c) *Authority.* The authority for this section is 33 U.S.C. 1226, 33 U.S.C. 1231, 33 CFR 1.05–1(g), and 49 CFR 1.46.

(d) *Regulations.* (1) Entry into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (412) 644–5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 8, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 02–5091 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Iowa 0127–1127a; FRL–7151–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision approves numerous rules adopted by the state in 1998, 1999, and 2001. This includes rules pertaining to definitions, compliance, permits for new or existing stationary sources, voluntary operating permits, permits by rule, and testing and sampling methods.

These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards, ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revisions according to section 110.

DATES: This direct final rule will be effective May 3, 2002 unless EPA receives adverse comments by April 3, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are

maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Action?

On August 21, 2000, February 7, 2001, July 23, 2001, and December 27, 2001, we received requests from the Iowa Department of Natural Resources (IDNR) to amend the SIP. The state requested that we approve amendments made to portions of the following rules:

Rule 567–20, Scope of Title-Definitions-Forms-Rule of Practice,
Rule 567–21, Compliance,
Rule 567–22, Controlling Pollution,
Rule 567–23, Emission Standards for Contaminants, and
Rule 567–25, Measurement of Emissions.

The rules were amended to accomplish a number of changes. For the most part, these amendments are primarily minor changes in wording to rules which are already in the approved SIP. In some instances clarifications and corrections were made. In other instances the rule is updated to align it with changes made in the Federal rule. Finally, updates to a number of references to Federal citations were made. A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and is available from the EPA contact above.

A few of the rule revisions which may be of interest, however, are mentioned here. Subrule 22.1(1) and paragraph 22.1(1)''c'' were amended to allow a true, minor source to begin construction prior to obtaining a permit, subject to certain conditions. Subrule 22.1(2) added additional information which incorporates a notification to IDNR upon request for certain types of emission units falling under a construction permit exemption. This recordkeeping process will ensure that IDNR has access to information on equipment for which certain exemptions are being claimed.

Paragraph 22.1(2)''i'' was amended to clarify requirements for those facilities wanting to get credit for emission reductions made as a result of the installation of control equipment. Subrule 22.3(8) adds a provision which requires that IDNR be notified when the ownership of equipment covered by a construction permit changes. This provision will require facilities to keep IDNR informed of who owns equipment covered by a construction permit. Paragraph 22.8(1)''e'' was amended to clarify the certification requirement for obtaining a permit by rule for spray booths. Paragraph 22.300(4)''b'' was amended to provide clarification to the definition of *de minimis* emissions and to the record keeping requirements for stationary sources with *de minimis* emissions.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—IOWA

2. In § 52.820 the table in paragraph (c) is amended:

a. Under Chapter 20 by revising the entry for ''567–20.2''.

b. Under Chapter 21 by revising the entry for ''567–21.2''.

c. Under Chapter 22 by revising the entries for ''567–22.1'', ''567–22.3'', ''567–22.4'', ''567–22.5'', ''567–22.8'', ''567–22.201'', ''567–22.203'', and ''567–22.300''.

d. Under Chapter 23 by revising the entries for ''567–23.3'' and ''567–23.4''.

e. Under Chapter 25 by revising the entry for ''567–25.1''.

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
*	* * *	*	*	* *
567–20.2 ..	Definitions	7/21/99	March 4, 2002 and FR cite.	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source, are not SIP approved.
*	* * *	*	*	* *
Chapter 21—Compliance				
*	* * *	*	*	* *
567–21.2 ..	Variances	7/21/99	March 4, 2002 and FR cite.	
*	* * *	*	*	* *
Chapter 22—Controlling Pollution				
567–22.1 ..	Permits Required for New or Existing Stationary Sources.	3/14/01	March 4, 2002 and FR cite.	Subrules 22.1(2), 22.1(2) ''g,'' 22.1(2) ''i'' have a state effective date of 5/23/01/
*	* * *	*	*	* *
567–22.3 ..	Issuing Permits	3/14/01	March 4, 2002 and FR cite.	Subrule 22.3(6) is not SIP approved.
567–22.4 ..	Special Requirements for Major Stationary Sources Located in areas Designated Attainment or Unclassified (PSD).	3/14/01	March 4, 2002 and FR cite.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
567–22.5 ..	Special Requirements for Nonattainment Areas	7/21/99	March 4, 2002 and FR cite.	
567–22.8 ..	Permit by Rule	7/21/99	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.201.	Eligibility for Voluntary Operating Permits	7/21/99	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.203.	Voluntary Operating Permit Applicatioins	10/14/98	March 4, 2002 and FR cite.	
*	* * * *	*	*	*
567–22.300.	Operating Permit by Rule for Small Sources	7/21/99	March 4, 2002 and FR cite.	Subrule 22.300(7)''c'' has a state effective date of 10/14/98.
Chapter 23—Emission Standards for Contaminants				
*	* * * *	*	*	*
567–23.3 ..	Specific Contaminants	7/21/99	March 4, 2002 and FR cite.	Subrule 23.3(2) has a state effective date of 5/13/98. Subrule 23.3(3)''d'' is not SIP approved.
567–23.4 ..	Specific processes	7/21/99	March 4, 2002 and FR cite.	Subrule 23.4(10) is not SIP approved.
*	* * * *	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1 ..	Testing and Sampling of New and Existing Equipment..	3/14/01	March 4, 2002 and FR cite.	
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[FR Doc. 02–4936 Filed 3–1–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 0126–1126a; FRL–7151–9]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Iowa Operating Permits Program for air pollution control. This revision approves numerous rule revisions adopted by the state since the initial approval of its program in 1995. Rule revisions approved in this action include rules pertaining to issuing permits, Title V operating permits, voluntary operating permits, and operating permits by rule for small sources.

These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revisions.

DATES: This rule is effective May 3, 2002, without further notice, unless EPA receives adverse comment by April 3, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittals are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

This section provides additional information by addressing the following questions:

What Is the Part 70 Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets certain Federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Does Federal Approval of a State Operating Permits Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved operating permits program is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

We have requested that each permitting authority periodically submit any revised part 70 rules to us for approval as a revision to their approved part 70 program. The purpose for this is to ensure that the state program and Federally-approved program are consistent, current and Federally enforceable.

Consequently, the state of Iowa has requested that we approve a number of revisions to its part 70 rules. In letters dated August 7, 2000, January 29, 2001, and July 18, 2001, the state requested that we approve various revisions to rules 567–22.100 through 567–22.116, 567–22.201, 567–22.203, and 567–22.300.

The rules were amended to accomplish a number of changes. Some amendments were primarily minor changes in wording to rules which were already in the approved program. In some instances clarifications and corrections were made. In other instances the rules were updated to align them with changes made in the Federal rules. Finally, updates to a number of references to Federal citations were made. A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here.

Rule 22.100, definition of ''major source,'' paragraph ''2'': Language added so that fugitive emissions of HAPs are considered in determining whether a stationary source is a major source.

Rule 22.103(2): Language added ozone to the list of insignificant activities that must be included in the Title V operating permit application, and provides clarification by striking reference to the Title V fee, which is not being required for insignificant activities.

Rule 22.106(1): Deleted prior language and added clarifying language as to when the fee is to be paid, what the fee is based on, and the schedule for establishing the fee and the process for establishing the fee.

Rule 22.106(6): Adds a new subrule which exempts sources from the requirement to pay the Title V permit fee until such time as the sources are required to apply for the Title V permits.

Rule 22.106(7): Rule was amended by adopting a new subrule 22.106(7) which added language to clarify that no Title V fee will be calculated for insignificant activities.

Rule 22.300(3)(b) and (c): Rule was amended by removing the eligibility deadline of December 9, 1999, for operating permit by rule for small sources for those sources subject to sections 111 and 112 of the CAA. Previously, these sources had five years from December 9, 1999, to obtain the operating permit by rule.

Rule 22.300(4)(b): Added clarification to the definition of *de minimis* emissions and to the recordkeeping requirements for stationary sources with *de minimis* emissions.

Rule 22.300(7): Rule was amended to provide clarification to the recordkeeping requirement for *non-de minimis* sources.

Have the Requirements for Approval of a Revision to the Operating Permits Program Been Met?

Our review of the material submitted indicates that the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

We are approving revisions to the Iowa part 70 operating permits program. We are processing this action as a final action because the revisions make

routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the Federal government established in the CAA. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permits program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to Part 70 is amended by adding under ''Iowa'' paragraph (c) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(c) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100 through 567–22.116 and 567–22.300 on August 7, 2000, rules 567–22.201, 567–22.203, and 567–22.300 (except 22.300(7)(''c'')) on January 29, 2001, and 567–22.100 and 567–22.106 on July 18, 2001. These revisions to the Iowa program are approved effective May 3, 2002.

* * * * *

[FR Doc. 02–4938 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[FCC 01–387]

Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this *Report and Order,* the Commission resolves certain issues

raised in the *Second Further Notice of Proposed Rule Making (Second Further NPRM)* in WT Docket No. 97–112 and CC Docket No. 90–6, and adopts a bifurcated approach to cellular licensing in the Gulf of Mexico Service Area (''GMSA'') based on the differences between the deployment of cellular service in the Eastern Gulf and the Western Gulf. In the Eastern Gulf, the Commission establishes a Coastal Zone in which its cellular unserved area licensing rules will apply. Cellular service in the Western Gulf will continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. The Commission establishes the Gulf of Mexico Exclusive Zone in which the Gulf carriers will be exclusively licensed to operate. Further, the Commission concludes that the issue of establishing new Gulf licensing areas for non-cellular services should be addressed on a service-by-service basis. The Commission also clarifies the rights of land-based licensees in those services in which it has not provided for licensing of carriers in the Gulf. The Commission concludes that these actions will spur the development of reliable service where needed, minimize disturbance to current operations and contractual arrangements, and help to resolve coverage conflicts.

DATES: Effective May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Noel, Michael Ferrante, or Linda Chang at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order,* adopted December 21, 2001, and released January 15, 2002, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of Report and Order

I. Background

1. *Initial Licensing of Cellular Service in the Gulf of Mexico.* The Commission first authorized the provision of cellular service in the Gulf of Mexico in 1983 and licensed two carriers to serve the region in 1985. The original rules allowed the Gulf carriers to operate throughout the GMSA, which extends to the shoreline and, therefore, includes coastal water areas. However, the Gulf carriers were limited to placing their transmitter sites on offshore platforms (predominantly oil and gas drilling platforms) and were prohibited from using land-based transmitters to serve the GMSA. In addition, in order to prevent interference to adjacent land-based cellular systems, the Gulf carriers were required to limit transmitter power from offshore sites to the extent necessary to avoid extending their service area contours over land.

2. The presence of the Gulf licensees placed similar limitations on land-based cellular operations in adjacent coastal areas. Land-based carriers were prohibited by the Commission's rules from extending their service area contours into the GMSA, *i.e.,* beyond the mean high-tide line that defined the service area border, except for *de minimis* extensions. As a result, land-based carriers seeking to cover shore areas, *e.g.,* to provide comprehensive service along coastal roads and in coastal communities, were unable to site transmitters close to the shoreline without incurring substantial engineering costs to avoid their signals being transmitted over water.

3. From the outset, these rules have caused conflict between the Gulf carriers and adjacent land carriers regarding the provision of service in the Gulf coastal region. Because offshore drilling has not occurred in the Eastern Gulf, these conflicts have occurred almost exclusively in the Western Gulf, particularly in areas where offshore and onshore sites were in close proximity. In some instances, the requirement to avoid encroachment into adjacent service areas has led to gaps in coverage, both on land and over water, because neither Gulf-based nor land-based carriers could extend coverage into these areas without capture of each other's subscriber traffic. In other instances, disputes have arisen over whether particular Gulf or land carriers were improperly extending coverage and capturing subscribers in the adjacent land or Gulf service area.

4. *Unserved Area Rules.* In 1993, the Commission adopted the *Unserved Area Second Report and Order,* 57 FR 13646 (April 17, 1992), which established unserved area licensing rules for land-based cellular service. Under these rules, the Cellular Geographic Service Area (''CGSA'') of each cellular system was redefined as the composite contour created by the actual service areas of all cells in the system. See 47 CFR 22.911. The CGSA is the area in which carriers are entitled to protection from interference and from capture of subscriber traffic by adjacent carriers. In addition, areas not within any carrier's CGSA were subject to reclamation by the Commission and licensing as unserved areas. In the *Unserved Area Third Report and Order,* 57 FR 53446 (November 10, 1992), the Commission extended these rules to cellular service in the Gulf. See Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90–6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration,* 57 FR 53446 (November 10, 1992). As a result, the Gulf carriers' service areas no longer comprised the entire GMSA, but were now limited to areas in the Gulf that received actual coverage from an offshore platform-based cell site. This caused portions of the Gulf that were outside the coverage area of any offshore cell site to be redefined as ''unserved'' areas, which could not be served by the Gulf carriers without further application and licensing.

5. *PetroCom Remand.* In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. *See Petroleum Communications, Inc.* v. *FCC,* 22 F.3d 1164 (D.C. Cir. 1994) *(PetroCom).* The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed adequately to justify the decision in the *Unserved Area* proceeding to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites. The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' CGSAs based on their areas of actual service. The effect of the remand was the restoration of the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites.

6. *Second Further NPRM Proposal.* Following the *PetroCom* decision, the Commission issued the *Second Further NPRM,* in which it initiated a comprehensive reexamination of the cellular service rules for the Gulf. *See* Cellular Service and Other Commercial Mobile Radio Services in the Gulf of

Mexico, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, WT Docket No. 97–112 and CC Docket No. 90–6, *Second Further NPRM,* 65 FR 24168 (April 25, 2000). Specifically, the Commission proposed dividing the GMSA into a Coastal Zone and an Exclusive Zone. Under this proposal, the Coastal Zone would consist of the portion of the GMSA extending from the coastline of the Gulf of Mexico to the twelve-mile offshore limit, while the Exclusive Zone would extend from the twelve-mile limit to the southern boundary of the GMSA. In the Exclusive Zone, the two existing Gulf carriers would be able to move their offshore transmitters freely and to expand or modify their systems without being required to file additional applications, obtain prior Commission approval, or face competing applications for the right to serve the territory. In the Coastal Zone, the Commission proposed to apply its Phase II unserved area licensing rules. Thus, within the Coastal Zone, any qualified applicant (including both Gulf- and land-based carriers) would be permitted to apply to serve unserved areas, and all mutually exclusive applications would be subject to competitive bidding procedures.

7. *Comments and Carriers' Proposals.* While commenting land carriers generally support the Commission's proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone, most oppose its proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone. Instead, many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a ''buffer zone'' extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their SABs and overlap contours, subject to mandatory frequency coordination, but without protection from subscriber capture. In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.

8. A second alternative proposal has been advanced by PetroCom, the A-side Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular propose a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they would redraw the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, this proposal would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. A carrier, however, would be allowed to use a higher effective radiated power than that resulting from the Commission's SAB formula, based on measurement data demonstrating equal signal strengths at the coastline. The resulting SAB extensions, however, would not be included as part of the other carrier's CGSA. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to ''reclaim'' the area if a new or relocated drilling platform enabled it to provide service. PetroCom and US Cellular also propose that pending, non-mutually exclusive Phase II applications to serve coastal waters be granted.

9. Coastel, the B-side Gulf carrier, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that the Commission terminate this rulemaking without adopting new rules. According to Coastel, the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf. Coastel contends that this change in circumstances obviates the need for further rulemaking, and further argues that the Commission's proposals in the *Second Further NPRM* would not reduce conflict because many issues would still remain to be resolved between carriers.

II. Discussion

10. The Commission finds that the record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. The development of cellular service has followed different paths in these two areas, which justifies treating them differently so as to spur the development of reliable service where needed, minimize the disturbance to current operations and contractual arrangements, and address the issues raised in the *PetroCom* remand.

A. Establishment of the Eastern Gulf Coastal Zone

11. As noted above, the circumstances with respect to the Gulf carriers' current service to and ability to serve the coastal areas vary greatly between the Eastern and Western Gulf. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. The record also indicates no likelihood of such platforms being constructed in the Eastern Gulf any time in the near future. The Commission agrees with PetroCom and US Cellular that, in light of these circumstances, there is a basis to differentiate between its approach to the Eastern Gulf and the Western Gulf.

12.The Commission concludes that, in the Eastern Gulf, the best way to ensure that seamless cellular service is provided '' both on land and in coastal waters—is to adopt its proposal to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water. Moreover, § 22.911(d)(2)(i) requires a land-based carrier in Florida to obtain the consent of the Gulf carrier to extend coverage over water, even though the Gulf carriers have no cellular facilities to serve Florida coastal waters.

13. Establishing a Coastal Zone in the Eastern Gulf will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength, thereby improving the reliability of service, from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

14. The remainder of the Eastern Gulf that is not included in the Coastal Zone, along with the entire Western Gulf, will be designated as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further NPRM,* the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will also have the flexibility to add, remove, modify, or relocate sites in the Exclusive Zone without notice to or approval by the Commission.

15. In the *Second Further NPRM,* the Commission proposed that the Coastal Zone would be coextensive with the territorial waters of the United States, a maritime zone that extends

approximately twelve nautical miles from the U.S. coastline. The Commission concludes that the territorial water limit will serve as an appropriate boundary between the Coastal Zone and the Exclusive Zone in the Eastern Gulf. This approach is also consistent with the approach the Commission has taken more recently in established services where it has provided for licensing in the Gulf. In the context of WCS, the Commission drew the boundary between land-based operations and Gulf-based operations at the territorial water limit. *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order,* 62 FR 09636 (March 3, 1997). Therefore, the Commission defines the Eastern Gulf Coastal Zone as the portion of the Gulf that is bounded by a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of approximately twelve nautical miles from the shoreline. A map setting out the coordinates of the Eastern Gulf Coastal Zone is attached at Appendix A.

16. The Commission believes that the most advisable course for licensing the Eastern Gulf Coastal Zone will be to define the region as unserved area. This will enable all entities to apply to serve areas of the Coastal Zone that are not currently served. Accordingly, the Commission will begin accepting Phase II unserved area applications to serve portions of the Coastal Zone sixty days after the effective date of the rules. Further, in the event of mutually exclusive applications, use of the Commission's unserved area competitive bidding rules will ensure that the authorization to serve a given area is awarded to the carrier that values it most and will help maximize the use of the spectrum. Carriers who apply to serve portions of the Eastern Gulf Coastal Zone will be required, consistent with the Commission's rules for terrestrial unserved areas, to construct facilities in these areas within one year from the date of receiving approval to serve this area.

17. The Commission recognizes that as a result of its decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. The Commission concludes, however, that the above-described public interest benefits of this course outweigh the costs. Because the Gulf carriers have no operations in the Eastern Gulf, this decision will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers. Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, the Commission's decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules the Commission is adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

18. Finally, the Commission notes that some land-based carriers in Florida have previously-granted *de minimis* extensions extending into the GMSA. The creation of the Eastern Gulf Coastal Zone is not intended to limit the scope of existing cellular operations, and the Commission therefore grandfathers all existing *de minimis* extensions of land carriers in the Eastern Gulf Coastal Zone. However, if a land carrier wishes to incorporate the area within an existing *de minimis* extension into its CGSA, it must file an unserved area application. In addition, carriers who are currently operating on the Florida coast under Special Temporary Authorization must file an unserved area application if they wish to operate on a permanent basis.

B. Licensing in the Western Gulf

19. While the Gulf carriers do not have offshore facilities in the Eastern Gulf, they have built an extensive offshore cellular network on oil and gas drilling platforms in the Western Gulf. In substantial portions of the Western Gulf, particularly off the coast of Louisiana, Mississippi, and Alabama, many of these platforms are located only a few miles from shore, enabling the Gulf carriers to extend coverage to the coastline.

20. The close proximity of these water-based sites to the coastline has given rise to technical and operational conflicts between the Gulf carriers seeking to provide service in coastal waters and the adjacent land-based carriers seeking to provide service to coastal communities, resorts, beaches, and coastal roads. In areas where land and water-based sites are close to one another, Gulf and land carriers must reduce their respective signal strength near the coastline in order to avoid incursions into their counterparts' markets. Some land-based carriers contend that the requirement to limit signal strength has led to gaps in their coverage along the coast, and that the Gulf carriers refuse to consent to SAB extensions into the Gulf that are needed to allow the land-based carriers to provide seamless service on land. The Gulf carriers dispute this characterization, and contend that it is the land-based carriers who are preventing them from providing ubiquitous service in the Gulf.

21. In addition, both Gulf and land carriers accuse one another of improperly extending coverage across the coastline into their counterparts' markets and consequently capturing subscriber traffic that should be served by the home carrier. Some land-based carriers contend that their customers have complained about placing calls on land that were captured by the Gulf carrier's system rather than the land-based system, requiring the customer to pay extremely high roaming charges to the Gulf carrier. The Gulf carriers argue that the land carriers have failed to document these alleged incidents of capture, that such capture is extremely uncommon, and that it is far more common in the Gulf for offshore cellular calls to be captured by land-based systems.

22. In the *Second Further NPRM,* the Commission proposed to bifurcate the Western Gulf into a Coastal and Exclusive Zone in the same manner that the Commission proposed (and is adopting today) for the Eastern Gulf. The Commission stated that it would grandfather all existing Gulf facilities, but that any unserved area in the Coastal Zone (i.e., area not currently served by the Gulf carrier from an existing offshore drilling platform) would be available for licensing under its cellular unserved area licensing rules. As noted above, commenters generally oppose this proposal, though from different perspectives. Most land carriers, led by ALLTEL, propose that the Coastal Zone should not be subject to unserved area licensing, but should instead be open to both Gulf and land-based carriers on a shared, coordinated basis. PetroCom, with the concurrence of US Cellular, opposes the creation of a Coastal Zone in the Western Gulf, proposing instead that land-based carriers be allowed to expand their SAB contours into unserved portions of the Gulf but also required to pull back if a Gulf carrier sought to serve the area. Coastel opposes the *Second Further NPRM* proposal and advocates continuing to apply the current rules without modification.

23. In evaluating its proposal and the alternatives presented by commenters,

the Commission considers it important to note that circumstances in the Western Gulf appear to have changed significantly since the adoption of the *Second Further NPRM.* First, in the *Second Further NPRM,* the Commission expressed concern regarding gaps in coverage of the Western Gulf, and sought to advance a solution that would ensure ubiquitous coverage of coastal waters (whether from land or water-based transmitters) in order to make service available not only to personnel on drilling platforms but also to coastal boat traffic. The record in this proceeding indicates that, in the past few years, the Gulf carriers have substantially expanded their networks and improved their coverage of the Western Gulf. As a result, there appear to be fewer gaps in coverage of coastal waters than there were previously.

24. Second, while there are still significant disputes between Gulf and land-based carriers generally, some Gulf and land carriers have successfully negotiated agreements since the *Second Further NPRM* that provide a mutually agreed-upon framework for cooperative operation along portions of the Western Gulf coast. In particular, PetroCom, the A-side Gulf carrier, has entered into a series of extension and collocation agreements with US Cellular and several other A-side land-based carriers. These agreements facilitate seamless coverage of coastal areas (over both land and water) and apply negotiated solutions to issues such as coverage, capture, and roaming rates. A similar accord has been negotiated by Coastel, the B-side Gulf carrier, and ALLTEL, the principal B-side land carrier, by which they have reached agreement with respect to their operations along the Alabama coastline, specifically in Mobile Bay.

25. In light of these developments, the Commission believes that the best way to achieve reliable, ubiquitous service in the Western Gulf is to encourage further reliance on negotiation and market-based solutions to the fullest extent possible. The fact that some Gulf- and land-based carriers have reached negotiated agreements suggests that carrier-driven solutions to these issues are possible without substantial changes to existing rules. Moreover, in other instances where negotiations have not been successful, a partial cause may be uncertainty and speculation regarding possible rule changes that could result from this proceeding. Thus, adopting rules that substantially change the relationship between land and Gulf carriers in the Western Gulf could be counter-productive by further delaying negotiated solutions and even leading parties to seek to unwind existing agreements.

26. Therefore, upon review of the record, the Commission concludes that it should not adopt its *Second Further NPRM* proposal to create a Coastal Zone subject to unserved area licensing rules in the Western Gulf. First, because of the buildout that has occurred in the Western Gulf in recent years, there is relatively little unserved area in what would comprise the Coastal Zone. Second, to the extent that applying unserved area licensing rules would impose a ''use or lose'' regime on the Gulf carriers (*i.e.,* a Gulf carrier providing service from an offshore platform could permanently lose the right to serve that portion of the Gulf if the platform were moved out of the area, even if the relocation was not permanent), the Commission is concerned that such a fundamental change in the rules could delay resolution of coverage conflicts and discourage negotiation of extension and collocation agreements between land and Gulf carriers.

27. The Commission similarly declines to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is designed to provide a basis for negotiated agreements, implementing it as a formal rule would, in effect, turn the Coastal Zone into a ''no-man's land'' where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. While the Commission has no objection to voluntary agreements along the lines of ALLTEL's proposal, it sees no compelling public interest reason to codify it in its rules, and is concerned that doing so could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone. In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

28. The Commission concludes that the wisest course is to designate a Gulf of Mexico Exclusive Zone by generally maintaining the currently applicable rules and continuing to encourage carriers to resolve their differences through negotiated agreements. Specifically, the Commission identifies the GMSA area west of the Eastern Gulf Coastal Zone as part of the Gulf of Mexico Exclusive Zone, which will reach landward up to the land-water boundary in the western portion of the Gulf. In reaching this conclusion, the Commission does not agree with Coastel's position that no revisions to the rules are required. However, the Commission believes that, with relatively minor modifications, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

29. Accordingly, in the Western Gulf, the Commission will maintain the GMSA border at the coastline as currently defined in its rules, and will allow the Gulf carriers to provide service throughout the Gulf of Mexico Exclusive Zone regardless of the location of their cell sites at any particular time. Thus, Gulf carriers will not be subject to a ''use or lose'' regime based on the movement of offshore drilling platforms. The Commission notes that this approach addresses the concern expressed by the court in *PetroCom* that the Commission's rules for the Gulf carriers take into account the transitory nature of water-based transmission sites. The Commission's decision gives the Gulf carriers full flexibility to build, relocate, modify and remove offshore facilities throughout the Western Gulf without seeking prior Commission approval or facing competing applications.

30. In the *Second Further NPRM,* the Commission noted that, although under its proposal only the Gulf carriers would have exclusive rights within the Exclusive Zone, the Commission tentatively concluded that *de minimis* extensions into unserved areas in the GMSA Exclusive Zone should be permitted. Upon further consideration of the proposal, however, the Commission does not believe it is necessary to permit *de minimis* extensions into the Exclusive Zone in light of the ability of the land-based and Gulf carriers to enter into agreements regarding their operations. In instances where it is necessary for a carrier to extend into an adjacent carrier's licensed area, the record reflects that contract extensions (*i.e.* where the Gulf and land licensees mutually agree to the extension) are sufficient to ensure reliable coverage.

31. The Commission recognizes that the rules it is adopting for the Western

Gulf cannot resolve all of the technical and operational conflicts (*e.g.,* interference, subscriber capture) that have arisen in areas where Gulf carriers and land carriers operate in close proximity to one another. Ultimately, only negotiation and cooperative arrangements between land and Gulf-based carriers can resolve these conflicts. Nonetheless, because the Commission's decision provides finality regarding its licensing and operational rules, the Commission expects that it will facilitate and speed the progress of such negotiations. The Commission emphasizes that under its decision today, parties remain free to negotiate consensual agreements that provide for extensions, coordination of frequencies, collocation, facilities sharing, or other solutions, so long as such agreements do not affect the rights of third parties. Thus, nothing in the decision is intended to modify or alter the effect of the existing agreements that have been negotiated by PetroCom or Coastel with adjacent land-based carriers. The Commission encourages Gulf and land-based carriers who have not reached negotiated agreements to enter into negotiations that could result in such agreements.

32. In seeking to facilitate negotiated agreements, it is the Commission's goal to create incentives for carriers to reach agreements that are not only mutually beneficial, but that also benefit existing and potential cellular subscribers. For example, while the Commission recognizes that the operating costs of Gulf carriers are typically higher than those of land-based carriers, the Commission seeks to ensure that they cannot recover those costs by charging uncompetitive rates or roaming charges to their customers, including the numerous land-based subscribers who may roam onto a Gulf carrier's network when close to the coastline (*e.g.,* recreational boaters). The Commission believes that the rules it adopts will help to foster a competitive marketplace in the Gulf that will protect consumers from such charges and practices. The Commission notes, for example, that some of the recently negotiated agreements between Gulf and land-based carriers provide for ''in-shore'' roaming rates that are comparable to roaming rates on land as opposed to the higher rates that PetroCom charges roamers operating significantly further out to sea. This creates a competitive incentive for similar terms to be negotiated in future agreements also. Moreover, the deployment of non-cellular services such as PCS along the Gulf coast will apply pressure on both cellular providers in the Gulf, and their land-based counterparts, to offer competitive services and rates.

C. Service Area Boundary Formula

33. In the *Unserved Area Second Report and Order,* the Commission applied the standard land-based SAB formula to operations by land carriers along the Gulf coast (''land formula''), but adopted a separate mathematical formula to define the SABs of facilities operated by the Gulf carriers from offshore sites (''water formula'') in the *Unserved Area Third Report and Order.* The use of different formulas recognized that cellular signals transmitted over water typically have stronger propagation characteristics (*i.e.,* can be received at greater distances from the transmitter) than comparable signals transmitted over land, which are attenuated by variations in terrain, buildings, trees, and other obstacles. The two SAB formulas also incorporated different assumptions regarding receivers: the land formula determined the distance to the service area boundary that results in reliable service to a conventional mobile unit, while the water formula established the distance to the service area boundary that results in reliable service to a marine mobile unit with a mast-mounted antenna. In the *Second Further NPRM,* the Commission sought comment on whether to retain the two-formula approach or to adopt an alternative ''hybrid'' approach that would account for signals in the Gulf coastal region that are transmitted over both land and water.

34. The Commission will continue to use the two existing SAB formulas for land and water-based sites, respectively. While no mathematical formula can precisely duplicate actual signal propagation in all circumstances, the Commission concludes that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water. In addition, the record reflects little support for a hybrid formula, and the Commission finds that it would be difficult to establish such a formula that would account for the variation in propagation of a single signal over both land and water. Finally, retaining the existing SAB formulas is consistent with the Commission's overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts. The Gulf carriers have been using the water formula to depict SAB contours for their facilities operating in the Gulf since the formula was adopted, while the land carriers have used the land-based formula for their facilities. Consequently, changing the SAB definitions at this point could lead to one side or the other unilaterally increasing their transmitter power under the revised definitions, which could upset existing agreements and create new conflicts. Of course, this does not preclude parties from entering into voluntary agreements that would allow for consensual transmitter power adjustments based on alternative contour definitions.

D. Placement of Transmitters

35. When the Commission initially licensed carriers to provide cellular service in the Gulf, it did not prohibit them from placing sites on land, but required Gulf carriers to avoid causing significant overlap of their reliable service area contours with land-based licensees. Subsequently, the Commission determined that allowing Gulf carriers to place transmitters on land would cause significant incursions over land and hamper the ability of land-based MSA and RSA licensees to carry out the initial build out of their systems. Thus the Commission concluded that Gulf carriers should not be permitted to place transmitters on land without the consent of the affected land-based carrier.

36. In the *Second Further NPRM,* the Commission observed that the land-based licensees along the Gulf coast have built out their cellular systems to encompass nearly the entire coastal land area of the Gulf region, and tentatively concluded that it was no longer necessary to prohibit Gulf carriers from siting on land, so long as no overlap with any land-based carrier's CGSA occurred. The Commission therefore proposed to abandon its blanket prohibition against Gulf carriers placing their transmitters on land, and proposed to rely solely on its CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter was permissible. *See* 47 CFR 22.912. In light of the course the Commission now takes, the Commission believes that it is appropriate to adopt this part of the proposal from the *Second Further NPRM* and permit Gulf carriers to operate land-based sites, subject to SAB extension rules as discussed above. The Commission believes that this additional flexibility will help facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

E. Pending Applications

1. Pending Phase II Applications

37. In December 1992, following its adoption of cellular unserved area licensing rules applicable to the Gulf, the Commission accepted Phase II applications for unserved area licenses in the GMSA. Many of these applications were petitioned against by the Gulf carriers. In addition, PetroCom filed a Phase II application that remains pending. However, following the *PetroCom* remand of the unserved area rules as they applied to the GMSA, the Commission suspended processing of these applications pending reconsideration of its policies in the Gulf region. In the *Second Further NPRM,* the Commission proposed that areas of the Coastal Zone that do not receive cellular service be treated as unserved areas and that Phase II competitive bidding procedures should be implemented for those areas. The Commission further proposed that all unserved area applications previously filed to serve Coastal Zone areas would be dismissed without prejudice, and that applicants would be allowed to resubmit their applications sixty days after the effective date of this rulemaking.

38. In light of its actions set out here, the Commission will dismiss all pending Phase II applications and associated petitions to deny. In both the Western Gulf, where the Commission has decided not to apply unserved area licensing procedures, and the Eastern Gulf, where the Commission is instituting unserved area licensing in the Coastal Zone, the Commission will allow carriers to refile to the extent allowed under the new rules adopted in this *Report and Order.* In light of the passage of several years since the applications were filed, the Commission concludes that dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

2. Pending *De Minimis* Extension Applications

39. Following the *PetroCom* remand, the Commission also suspended processing of applications for *de minimis* extensions into the Gulf. In the *Second Further NPRM,* the Commission proposed to dismiss all such pending applications because the *PetroCom* court directed us to vacate former § 22.903(a) to the extent that it applied to the Gulf carriers, and because virtually all applications for contour extensions were subject to petitions to deny and applications for review. The Commission also noted that pending applicants would not be prejudiced by a dismissal of extension applications, because such applicants would have the opportunity to resubmit applications under the Commission's revised licensing rules for unserved areas in the Gulf.

40. Based on the actions the Commission takes in the *Report and Order,* the Commission will dismiss all pending extension applications and allow carriers to refile to the extent permissible under the rules the Commission adopts in this *Report and Order.* The Commission concludes that dismissal is the more equitable course in light of the passage of time since the applications were filed and the fact that the rules under which they were filed have undergone some modification.

F. Other Services.

41. In the *Second Further NPRM,* the Commission requested comment regarding possible operations in the Gulf by CMRS licensees in services other than cellular. Specifically, the Commission asked whether the Commission should establish a Gulf licensing area, analogous to the cellular GMSA, for use in other CMRS services and, if such a licensing area were established, where the boundary should lie between it and the adjacent licensing areas of land-based CMRS providers. The Commission received only limited comment on the issue of licensing such services in the Gulf. Stratos Offshore Services Company (''Stratos''), which operates a microwave network that supports communications in the Gulf, generally supports creating a license area for the non-cellular services to protect licensees operating in the Gulf. Stratos, however, does not support licensing PCS in the Gulf because of the high cost of relocating microwave networks operating at 2 GHz. On the other hand, DW Communications, a 900 MHz operator with at least one license along the Gulf coast, argues that creating Gulf area licenses in other services would create more problems than would be solved. PCS licensees Sprint PCS and Verizon Wireless each argue that the Commission's PCS service area rules define boundaries based on county lines, which, under state law, extend into the Gulf's offshore areas, and therefore, the Commission should not create a separate license area for PCS in the Gulf.

42. Since the issuance of the *Second Further NPRM,* the Commission has established Gulf licensing areas in several other services, including Wireless Communications Service (''WCS''), Multiple Address Systems (MAS), 746–747/776–777 and 762–764/792–794 MHz bands (''700 MHz Guardband''), 24.25–24.45 GHz and 25.05–25.25 GHz bands (''24 GHz''), and the 746–764 MHz and 776–794 MHz bands (''700 MHz''). In the case of WCS, the Commission incorporated United States territorial waters in the Gulf, *i.e.,* waters from the shoreline to a line 12 nautical miles offshore, into the adjacent land-based licensing areas. Thus, the WCS licensing area, unlike the original cellular GMSA, extends seaward from the 12-mile limit, and includes coastal waters. For 700 MHz, the Commission established Economic Area Groupings (EAGs) whereby the Gulf of Mexico is divided in two, with the eastern portion being included in the license for Southeast EAG, and the western portion being included in the license for the Central/Mountain EAG.

43. With respect to non-cellular CMRS services, the Commission concludes that it should not create a Gulf licensing area in this proceeding for all such services, but instead should take up the issue of establishing a Gulf licensing area on a service-by-service basis, as it did for WCS, MAS, 24 GHz, 700 MHz Guardband, and 700 MHz. The dearth of support in this proceeding advocating creation of Gulf licensing areas suggests that there is limited interest among carriers in many non-cellular CMRS services in providing service to offshore drilling facilities analogous to that provided by the Gulf cellular carriers. Furthermore, to the extent that carriers in a particular service may wish to establish a Gulf licensing area for that service, it can address such issues separately, taking into account the specific characteristics of that service.

44. On the other hand, land-based carriers in services that have no service provider licensed in the Gulf have expressed significant interest in the Commission clarifying whether they can extend their coverage offshore from land-based sites. The Commission finds that in those services where there is no licensed carrier in the Gulf, it is in the public interest to allow land-based CMRS carriers to extend their coverage offshore, both to increase coverage and service quality for land-based customers along the coastline and to offer service to coastal boating traffic. In general, the geographic service area definitions used for non-cellular CMRS services are based on county boundaries, which extend over water pursuant to state law. The Commission therefore clarifies that the licensing areas of land-based

licensees in such services extend to the limit of county boundaries that extend over water. In addition, licensees may provide service extending further into the Gulf on a secondary basis so long as they comply with the technical limitations applicable to the radio service and do not cause co-channel or adjacent channel interference to others.

45. Finally, PetroCom has filed a petition for rulemaking with respect to establishment of special interference criteria for Gulf-based facilities. Although the Commission has never adopted specific rules for licensing of water-based SMR facilities, the Commission has issued some site-specific SMR licenses to PetroCom for sites in the Gulf. Under the existing SMR rules, these sites are entitled to interference protection on the same basis as site-specific licenses on land. In its petition, PetroCom sought to change the interference protection rules for site-based SMR facilities in the Gulf, arguing that the land-based rules did not adequately protect its water-based facilities. The Commission incorporated PetroCom's petition into the *Second Further NPRM* and sought comment on it. However, the Commission received only limited comment on issues relating to Gulf-based SMR facilities. Moreover, since the *Second Further NPRM,* the Commission has issued land-based EA licenses in the 800 MHz SMR service, and have received no indication that the operations of these licensees have caused interference to Gulf-based SMR facilities. The Commission concludes that in light of these circumstances, the record before us does not support amending the existing SMR rules as they apply to service in the Gulf, and the Commission therefore denies PetroCom's petition. However, PetroCom or any other party is free to file an updated petition for rulemaking if it believes that current or potential circumstances warrant revision of the SMR rules to protect the operation of Gulf-based facilities.

III. Conclusion

46. The Commission concludes this reevaluation of its Gulf cellular rules by finding that the carriers themselves are best able to resolve most of the issues standing in the way the provision of reliable, ubiquitous cellular coverage to both land-based and Gulf-based subscribers in the Gulf region. The imposition of a new regulatory structure would cause additional and unnecessary delay in meeting this goal. In addition, the record reflects that a number of carriers have been able to resolve their differences under the current rules. The Commission believes the few changes it now makes help to strike a fair balance between the interests of the carriers, the interest of the public, and the need for flexibility to deal with these issues.

IV. Procedural Matters

Final Regulatory Flexibility Act Analysis

47. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 604 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further NPRM.* The Commission sought written public comment on the proposals in the *Second Further NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

48. In this *Report and Order*, the Commission resolves certain issues raised in the *Second Further NPRM* in this proceeding, in which the Commission proposed changes to its cellular service rules for the Gulf of Mexico Service Area (GMSA). This decision also responds to the remand by the United States Court of Appeals for the District of Columbia Circuit in the *PetroCom*. In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed to adequately justify the decision to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites. The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' Cellular Geographic Service Areas (CGSA) based on their areas of actual service. The effect of the remand was the restoration of the original rules that defined the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites. In this *Report and Order*, the Commission adopts a bifurcated approach to cellular licensing in the Gulf, based on the differences between the deployment of cellular service in the Eastern Gulf (the Florida Gulf coast) and the Western Gulf (the Texas, Louisiana, Mississippi, and Alabama Gulf Coast). In the Eastern Gulf, where there are no offshore oil and gas drilling platforms on which to site cellular facilities, the Commission adopts its proposal to establish a Coastal Zone in which its cellular unserved area licensing rules will apply. In the Western Gulf, the Commission finds that the extensive deployment of both Gulf-based and land-based facilities that has occurred in the past few years makes adoption of its *Second Further NPRM* proposal impractical. Instead, the Commission concludes that cellular service in the Western Gulf should continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. Accordingly, the Commission establishes the Gulf of Mexico Exclusive Zone, encompassing the Western Gulf and areas of the Eastern Gulf outside of the Coastal Zone, in which the Gulf carriers will have the exclusive right to operate.

49. The *Second Further NPRM* also requested comment regarding possible operations in the Gulf by Commercial Mobile Radio Services (CMRS) licensees for services other than cellular. Given the limited comment the Commission received on these issues, it declines to adopt specific licensing and service rules for the provision of non-cellular services in the Gulf at this time. The Commission concludes, however, that the boundaries of non-cellular CMRS markets with market areas that are derived from the aggregation of counties (e.g. Economic Areas, Basic Trading Areas), are coterminous with county boundaries absent specific service rules to the contrary.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

50. Although the Commission has received a number of comments in response to the *Second Further NPRM*, it received only one comment in response to the IRFA. However, as described below, the Commission has nonetheless considered potential significant economic impacts of the rules on small entities.

51. *Comments raised in response to the Second Further NPRM regarding proposals that may have an impact on small entities.* In response to the *Second Further NPRM*, the Commission received a number of comments and alternative proposals from land-based and Gulf-based carriers, many of which have been supplemented recently with *ex parte* presentations. Some

commenting land carriers generally support the proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone, while most oppose the Commission's proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone. Many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a ''buffer zone'' extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their service area boundaries (SABs), subject to mandatory frequency coordination, but without protection from subscriber capture. In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.

52. A second alternative proposal has been advanced by PetroCom, a Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular advocate a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they propose that the Commission extend the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, PetroCom and US Cellular would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to ''reclaim'' the area if a new or relocated drilling platform enabled it to provide service.

53. Another commenter, Coastel, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that the Commission terminate this rulemaking without adopting new rules. Coastel asserts that the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf. Coastel contends that this change in circumstances obviates the need for further rulemaking, and argues that the Commission's proposals in the *Second Further NPRM* would not reduce conflict because many issues would still remain to be resolved between carriers.

54. With respect to the issue of whether or not to create Gulf of Mexico service areas for non-cellular commercial mobile radio services (CMRS), a few commenters state that customers in the Gulf would benefit from additional CMRS options. Others, however, oppose the creation of additional market areas in the Gulf. Commenters argue that creating Gulf area licenses in other services would create more problems than would be solved. A few commenters assert that incumbent licensees with markets adjacent to the Gulf are already authorized to serve the Gulf's offshore areas.

55. Certain commenters also express concern over the Commission's proposal to dismiss all pending Phase II and *de minimis* applications. Some commenters object to the dismissing of applications because applicants have spent time and resources to file the applications, and suggest that the Commission process the pending applications instead.

56. Further, the two Gulf carriers argue that they should be permitted to site their transmitters on land. Other commenters argue that such sites should not be permitted, because interference and capture issues will likely arise if Gulf carriers are permitted to locate transmitters on land without the land-based carrier's consent. Commenters also generally oppose the proposal to adopt a ''hybrid'' propagation approach that would account for signals in the Gulf coastal region that are transmitted over both land and water. Commenters argue that a hybrid formula would be unworkable and expensive.

57. *Comment in response to the IRFA.* In an *ex parte* submission filed on August 21, 2001, PetroCom revised its proposal and that of U.S. Cellular for consideration by the Commission as an alternative to the agency's proposed rules in this proceeding pursuant to the RFA. PetroCom contends that it has opposed any changes to the current definition of its CGSA on the Western (non-Florida) side of the Gulf where it has fully built out infrastructure providing cellular service to customers throughout the proposed Coastal Zone, and that such action would adversely impact the proposed Coastal Zone rules. PetroCom states that there is no factual, legal or policy reason to change the current rules that require it's consent to the SAB extensions of land carriers that cross the coastline into it's CGSA.

58. PetroCom asserts that paragraphs 64–72 of the *Second Further NPRM* violates several RFA requirements. Among its assertions, PetroCom states that the Commission's IRFA does not describe the impact of the proposed Coastal Zone on small entities, and that the Commission failed to describe alternatives to the Coastal Zone as required by the RFA. Further, PetroCom asserts that the Commission failed to provide a small entity impact analysis with respect to the agency's proposal and an analysis of alternatives. Further still, PetroCom calls attention to the Commission's IRFA in the *Second Further NPRM*, which it avers, contained no discussion or analysis of the 15-day reporting rule that was proposed in paragraph 47 which conflicts with Section 1.947 of the rules that contains a 30-day reporting rule. PetroCom also asserts that the Commission's definition of a small business has not complied with SBA rules.

59. PetroCom states that there is nothing in the record that will support a finding in an FRFA that the creation of a Coastal Zone as proposed in the *Second Further NPRM* **IS THE BEST ALTERNATIVE.** Further, PetroCom asserts that the alternatives advocated by other carriers (*see infra*) will significantly affect the annual revenues of the Gulf carriers. PetroCom argues that, among the various alternatives, its joint proposal best minimizes adverse impacts on small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

61. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons. 13 CFR 121.201. According to the Census Bureau, only twelve radiotelephone (wireless) firms from a

total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to a recent *Telecommunications Reporting Worksheet* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, and Specialized Mobile Radio (SMR) telephony carriers, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. The Commission estimates that there are fewer than 806 small wireless service providers that may be affected by these revised rules.

62. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone (Wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons. According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

63. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these definitions. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

64. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

65. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to a recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 172 small paging carriers that may be affected by the rules adopted herein. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

66. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the

1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the reauction of 422 C and F Block licenses. Of the 35 winning bidders, 30 were small business entities. Based on this information, the Commission concludes that there are approximately 261 small entity broadband PCS providers as defined by the SBA and the Commission's auction rules.

67. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

68. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

69. The auction of the 1,030 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission anticipates that a total of 2,823 EA licenses will be auctioned in the lower 80 channels of the 800 MHz SMR service. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the lower 80 channels that may ultimately be affected by these proposals could be as many as 2,823. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

70. In this *Report and Order*, the Commission reexamines its cellular service rules as they apply to the Gulf of Mexico Service Area. The principal goals in this proceeding are to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and to provide reliable, seamless service to the Gulf region. The Commission does not impose reporting or record keeping requirements in this *Report and Order*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

72. *Creation of the Eastern Gulf Coastal Zone and Gulf of Mexico Exclusive Zone.* The record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. As the Commission explains in its *Report and Order*, the best way to ensure that seamless cellular service is provided in the Eastern Gulf—both on land and in coastal waters—is to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water.

73. Establishing an Eastern Gulf Coastal Zone will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength (and resulting coverage) from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

74. The remainder of the eastern half of the Gulf that is not included in the Eastern Gulf Coastal Zone will be designated, along with the entire Western Gulf, as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further NPRM*, the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will have full flexibility to build, relocate, modify and remove offshore facilities throughout the Gulf of Mexico Exclusive Zone without seeking prior FCC approval or facing competing applications. While the Commission does not agree with Coastel's position that no revisions to the rules are required, the Commission believes that with relatively minor modifications, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

75. The Commission recognizes that as a result of its decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf

carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. The Commission must weigh, however, not only the interests of the Gulf carriers, but also the interests of adjacent land-based carriers and, most of all, the need to provide cellular subscribers in the coastal region with seamless coverage by the most technically efficient means, whether from land or water-based sites. Because the Gulf carriers have no operations in the Eastern Gulf, this decision will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers. Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, the Commission's decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules the Commission is adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

76. The Commission declines to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is designed to provide a basis for negotiated agreements, the Commission believes the effect of this proposal would be to turn the Coastal Zone into a ''no-man's land'' where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. The Commission is concerned that adopting the ALLTEL proposal could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone. In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

77. *Service Area Boundary Formula.* In this *Report and Order* the Commission concludes that it should retain the existing land-based and water-based SAB formulas. The Commission concludes that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water, and are easier to use than a hybrid formula. Moreover, retaining the existing SAB formulas is consistent with the Commission's overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts.

78. *Placement of Transmitters.* The Gulf carriers urge the Commission to allow them to site their transmitters on land without the express consent of the applicable land-based licensees. The Commission believes that a blanket prohibition against Gulf carriers placing their transmitters on land is not necessary, and it will rely on its CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter is permissible. Although the Gulf carriers argue that this action is insufficient, the Commission believes that this will provide additional flexibility that will facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

79. *Pending applications.* In its *Report and Order*, the Commission concludes that areas of the Eastern Gulf Coastal Zone that do not receive cellular service shall be defined as unserved areas and that Phase II competitive bidding procedures implemented for those areas. All unserved area applications previously filed to serve Eastern Gulf Coastal Zone areas are dismissed, as well as their associated petitions to deny. Similarly, the Commission dismisses all pending *de minimis* extensions into the Gulf in this *Report and Order*. The Commission considered whether or not the dismissal of pending licenses would impose significant additional costs or burdens on carriers. The Commission finds that this action will not prejudice carriers because such applicants have the opportunity to resubmit applications to the extent allowed under the new rules adopted in the *Report and Order*. The Commission concludes that, in light of the passage of several years since the applications were filed, dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

80. *Report to Congress:* The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Paperwork Reduction Act Analysis

81. The actions taken in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

VI. Ordering Clauses

82. Pursuant to the authority of sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes are adopted.

83. Pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), the applications set forth below are dismissed.

84. The Wireless Telecommunications Bureau will begin accepting Phase II unserved area applications for the Gulf of Mexico Coastal Zone on July 2, 2002.

Pursuant to section (4)(i) of the Communications Act, as amended, 47 U.S.C. 154(i), the creation of the Gulf of Mexico Coastal Zone, the coordinates of which are represented in Appendix A, is adopted.

85. The Petition for Rulemaking filed by Petroleum Communications is *Denied*.

86. The rule changes set forth below will become effective May 3, 2002.

87. *It is further ordered* that this proceeding is *Terminated*.

List of Subjects in 47 CFR Part 22

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

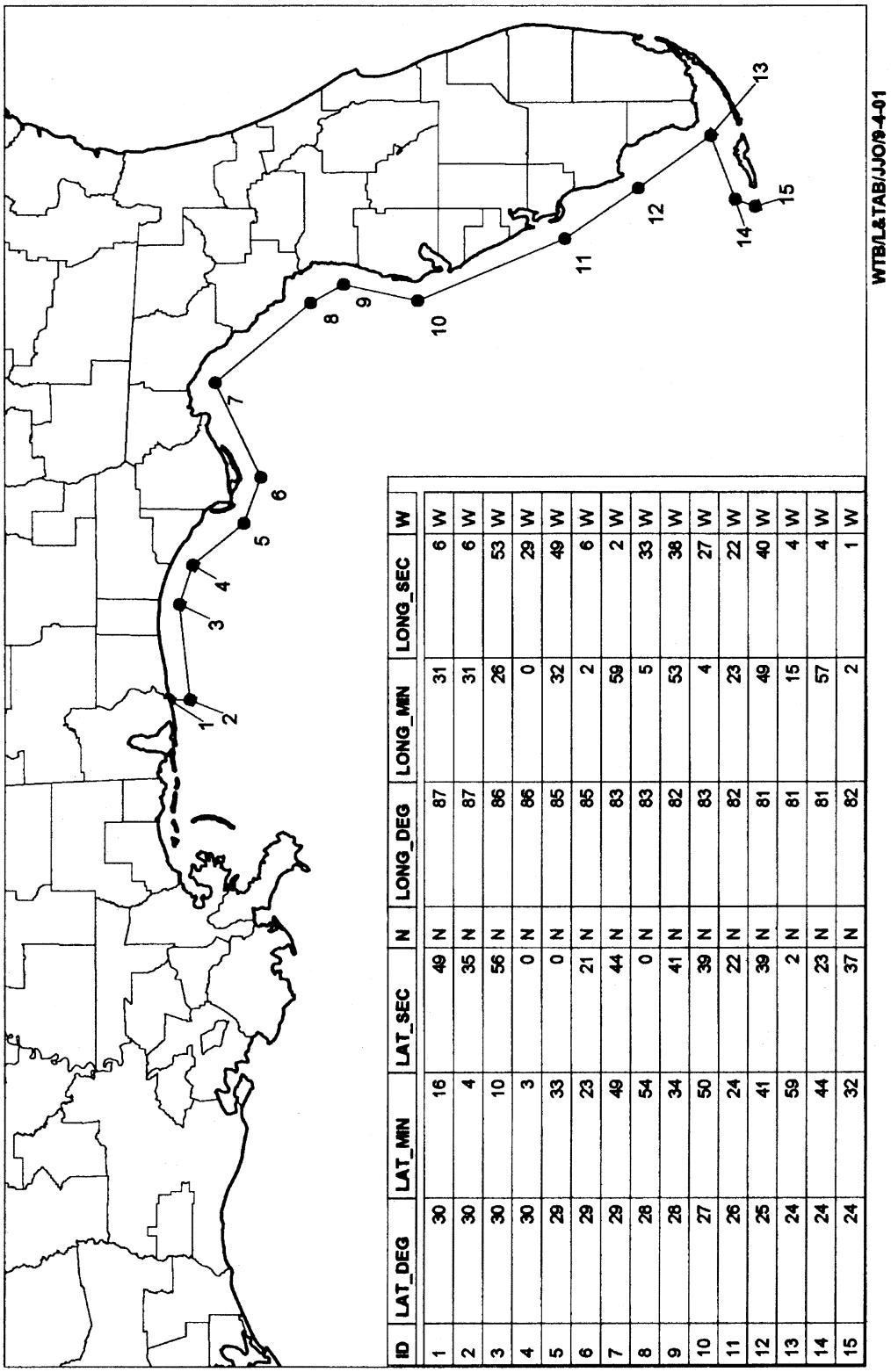
Note: The following appendix to the preamble will not appear in the Code of Federal Regulations.

BILLING CODE 6712–01–P

MAP OF EASTERN GULF COASTAL ZONE COORDINATES

Appendix A

Gulf of Mexico Coastal Zone for the the Cellular Radiotelephone Service



ID	LAT_DEG	LAT_MIN	LAT_SEC	N	LONG_DEG	LONG_MIN	LONG_SEC	W
1	30	16	49	N	87	31	6	W
2	30	4	35	N	87	31	6	W
3	30	10	56	N	86	26	53	W
4	30	3	0	N	86	0	29	W
5	29	33	0	N	85	32	49	W
6	29	23	21	N	85	2	6	W
7	29	49	44	N	83	59	2	W
8	28	54	0	N	83	5	33	W
9	28	34	41	N	82	53	38	W
10	27	50	39	N	83	4	27	W
11	26	24	22	N	82	23	22	W
12	25	41	39	N	81	49	40	W
13	24	59	2	N	81	15	4	W
14	24	44	23	N	81	57	4	W
15	24	32	37	N	82	2	1	W

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Phase II and De Minimis Extension Applications

The following pending Phase II applications for unserved area licenses in the Gulf of Mexico Service Area (GMSA) and applications for *de minimis* extensions into the GMSA will be dismissed. Any associated pleadings relating to these applications are also dismissed.

Cellular Block ''A'' applications	Cellular Block aaB'' applications
07433–CL–MP–902.	10152–CL–P–306–B–93
07440–CL–MP–95.	01621–CL–MP–93
01091–CL–CP–95.	01613–CL–MP–93
01094–CL–CP–95.	04076–CL–MP–95
01096–CL–CP–95.	04915–CL–MP–95
01328–CL–CP–95.	06794–CL–MP–95
01329–CL–CP–95.	07427–CL–MP–95
02025–CL–CP–95.	00103–CL–MP–96
02163–CL–CP–95.	02245–CL–MP–96
02165–CL–CP–95.	03856–CL–P2–97
04160–CL–CP–95.	03857–CL–P2–97
05605–CL–P2–95.	03858–CL–P2–97
05913–CL–MP–95.	03859–CL–MP–97
06361–CL–P2–95.	03860–CL–MP–97
01743–CL–P2–96.	
04235–CL–P2–96.	
04992–CL–P2–96.	
00700–CL–P2–97.	
02590–CL—97 ...	
02591–CL—97 ...	
02592–CL—97 ...	
02593–CL—97 ...	
02594–CL—97 ...	
02595–CL—97 ...	
02596–CL—97 ...	
02597–CL—97 ...	
02600–CL–P2–97.	
01242–CL–MP–98.	
01243–CL–MP–98.	
01244–CL–MP–98.	
01245–CL–MP–98.	
02407–CL–P2–98.	

Rule Changes

For the reasons discussed in the *Preamble*, the Federal Communications Commission amends 47 CFR Part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 151, 222, 303, 309 and 332.

2. Section 22.99 is amended by adding the following definition, in alphabetical order to read as follows:

§ 22.99 Definitions.

* * * * *

Gulf of Mexico Service Area (GMSA). The cellular market comprising the water area of the Gulf of Mexico bounded on the West, North and East by the coastline. Coastline, for this purpose, means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. Inland waters include bays, historic inland waters and waters circumscribed by a fringe of islands within the immediate vicinity of the shoreline.

* * * * *

3. Section 22.911 is amended by removing the Note to paragraph (a) and revising paragraph (a)(2) introductory text to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(a) * * *

(2) For cellular systems with facilities located within the Gulf of Mexico Service Area, the distance from a cell transmitting antenna to its SAB along each cardinal radial is calculated as follows:

* * * * *

4. Section 22.946 is revised to read as follows:

§ 22.946 Service commencement and construction systems.

(a) *Commencement of service.* New cellular systems must be at least partially constructed and begin providing cellular service to subscribers within the service commencement periods specified in Table H–1 of this section. Service commencement periods begin on the date of grant of the initial authorization, and are not extended by the grant of subsequent authorizations for the cellular system (such as for major modifications). The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met (*see* § 1.946 of this chapter).

TABLE H–1.—COMMENCEMENT OF SERVICE

Type of cellular system	Required to commence service in
The first system authorized on each channel block in markets 1–90.	36 months.
The first system authorized on each channel block in all other markets and any subsequent systems authorized pursuant to contracts in partitioned markets.	18 months.
The first system authorized on each channel block in the Gulf of Mexico Exclusive Zone.	No requirement.
All other systems	12 months.

(b) To satisfy the requirement of paragraph (a) of this section, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is not considered to be providing service to subscribers if mobile stations can not make telephone calls to landline telephones and receive telephone calls from landline telephones through the PSTN, or if the system intentionally serves only roamer stations.

(1) [Reserved]

(2) The licensee must notify the FCC (FCC Form 489) no later than 15 days after the requirements of paragraph (a) of this section are met.

(c) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which an authorization has been granted is one year from the date the authorization is granted. Failure to comply with this requirement results in termination of the authorization for the specific new or modified facility, pursuant to § 22.144(b).

5. Section 22.947 is amended by revising the introductory text to read as follows:

§ 22.947 Five-year buildout period.

Except for systems authorized in the Gulf of Mexico Exclusive Zone, the licensee of the first cellular system authorized on each channel block in each cellular market is afforded a five year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system within that market.

* * * * *

6. Section 22.949 is amended by revising the introductory text to read as follows:

§ 22.949 Unserved area licensing process.

This section sets forth the process for licensing unserved areas in cellular markets on channel blocks for which the five year build-out period has expired. This process has two phases: Phase I and Phase II. This section also sets forth the Phase II process applicable to applications to serve the Gulf of Mexico Coastal Zone.

* * * * *

7. Section 22.950 is added to read as follows:

§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA)

The GMSA has been divided into two areas for licensing purposes, the Gulf of Mexico Exclusive Zone (GMEZ) and the Gulf of Mexico Coastal Zone (GMCZ). This section describes these areas and sets forth the process for licensing facilities in these two respective areas within the GMSA.

(a) The GMEZ and GMCZ are defined as follows:

(1) *Gulf of Mexico Exclusive Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coastline line and the southern demarcation line of the Gulf of Mexico Service Area, excluding the area comprising the Gulf of Mexico Coastal Zone.

(2) *Gulf of Mexico Coastal Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coast line of Florida and a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of twelve nautical miles from the shoreline. The line is defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

(i) 30°16′49″ N 87°31′06″ W
(ii) 30°04′35″ N 87°31′06″ W
(iii) 30°10′56″ N 86°26′53″ W
(iv) 30°03′00″ N 86°00′29″ W
(v) 29°33′00″ N 85°32′49″ W
(vi) 29°23′21″ N 85°02′06″ W
(vii) 29°49′44″ N 83°59′02″ W
(viii) 28°54′00″ N 83°05′33″ W
(ix) 28°34′41″ N 82°53′38″ W
(x) 27°50′39″ N 83°04′27″ W
(xi) 26°24′22″ N 82°23′22″ W
(xii) 25°41′39″ N 81°49′40″ W
(xiii) 24°59′02″ N 81°15′04″ W
(xiv) 24°44′23″ N 81°57′04″ W
(xv) 24°32′37″ N 82°02′01″ W

(b) *Service Area Boundary Calculation.* The service area boundary of a cell site located within the Gulf of Mexico Service Area is calculated pursuant to § 22.911(a)(2). Otherwise, the service area boundary is calculated pursuant to §§ 22.911(a)(1) or 22.911(b).

(c) Operation within the Gulf of Mexico Exclusive Zone (GMEZ). GMEZ licensees have exclusive right to provide service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior Commission approval. There is no five-year buildout period for GMEZ licensees, no requirement to file system information update maps pursuant to § 22.947, and no unserved area licensing procedure for the GMEZ.

(d) Operation within the Gulf of Mexico Coastal Zone (GMCZ). The GMCZ is subject to the Phase II unserved area licensing procedures set forth in § 22.949(b).

[FR Doc. 02–4552 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 02–22]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsidered certain aspects of per-payphone compensation pursuant to a remand by the U.S. Court of Appeals for the District of Columbia Circuit. To implement the remand, the Commission established a new default compensation amount for completed access charge and subscriber 800 calls per payphone per month, and resolved the issues of compensation for 0+ and inmate calls, interest rates, and a number of other related matters.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Order on Reconsideration and Order on Remand (Order) in CC Docket No. 96–128, adopted January 28, 2002, and released on January 31, 2002. The complete text of this Order is available for public inspection Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the Commission's Consumer Information Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC 20554. The complete text is available also on the Commission's Internet site at www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com.*

Synopsis of Fourth Order on Reconsideration and Order on Remand

1. After a remand by the U.S. Court of Appeals for the D.C. Circuit in *Illinois Pub. Telecomm. Ass'n* v. *FCC,* 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g,* 123 F.3d 693 (D.C. Cir. 1997), cert. *denied sub nom. Virginia State Corp. Comm'n* v. *FCC,* 523 U.S. 1046 (1998) (hereinafter *Illinois*), the Commission established in this Order the amount of monthly per-payphone compensation for access charge and subscriber 800 calls, beginning November 7, 1996. This amount is $33.892 per payphone per month. The Commission also calculated the amount of monthly per-payphone compensation for 0+ calls during the period beginning November 7, 1996 through October 6, 1997 (sometimes called the interim period), if the payphone service provider was not otherwise compensated. This amount is $4.2747 per payphone per month, paid by the interexchange carrier presubscribed during the interim period.

2. In this Order, the Commission determined the rate of per-call compensation for inmate calls during the interim period, if the payphone service provider was not otherwise compensated. The interexchange carrier presubscribed during the interim period pays $0.229 per inmate call ''that otherwise would have been compensated.'' For example, if the policy or practice of the specific presubscribed interexchange carrier was not to pay compensation to a payphone service provider for a collect call from an inmate when the called party refused to accept charges for that particular call during the interim period, then the specific presubscribed interexchange carrier is not required now to pay compensation of $0.229 for that

particular inmate call. In addition, if the presubscribed interexchange carrier failed to retain the records of inmate calls originating during the interim period for which compensation now must be paid according to this Order, then that presubscribed interexchange carrier must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific payphone service provider to be compensated will be allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number.

3. For access code calls, subscriber 800 calls, inmate calls or 0+ calls, a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest. The payphone compensation for access code calls, subscriber 800 calls, inmate calls or 0+ calls decided in this Order is a default amount, used in the absence of a negotiated amount. The Commission concluded moreover that the duty to pay interim compensation should not be limited to carriers with annual toll revenue above $100 million, but should include all interexchange carriers and local exchange carriers to the extent that local exchange carriers receive compensable payphone calls. In addition, the Commission excluded resellers from direct payment obligations for interim compensation to eliminate some of the non-payment problems described in the *Second Reconsideration Order,* 66 FR 21105 (Apr. 27, 2001). *See also Third Reconsideration Order,* 67 FR 3621 (Jan. 25, 2002).

4. The Commission in this Order also designated the payphone compensation interest rate for the interim period and the period beginning October 7, 1997 through April 20, 1999 (sometimes called the intermediate period) as the applicable rate for refund obligations set by the Internal Revenue Service (IRS) pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621. Based on an IRS Revenue Ruling published December 26, 2001, in Appendix C of the Order, the Commission provided the interest rates applicable to payphone compensation beginning the last quarter of 1996 through March 31, 2002.

TABLE OF OVERPAYMENTS INTEREST RATES FROM OCTOBER 1, 1996 THROUGH DECEMBER 31, 1998

Oct. 1, 1996–Dec. 31, 1996	8%
Jan. 1, 1997–Mar. 31, 1997	8%
Apr. 1, 1997–Jun. 30, 1997	8%
Jul. 1, 1997–Sep. 30, 1997	8%
Oct. 1, 1997–Dec. 31, 1997	8%
Jan. 1, 1998–Mar. 31, 1998	8%
Apr. 1, 1998–Jun. 30, 1998	7%
Jul. 1, 1998–Sep. 30, 1998	7%
Oct. 1, 1998–Dec. 31, 1998	7%

TABLE OF NONCORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	7%
Apr. 1, 1999–Jun. 30, 1999	8%
Jul. 1, 1999–Sep. 30, 1999	8%
Oct. 1, 1999–Dec. 31, 1999	8%
Jan. 1, 2000–Mar. 31, 2000	8%
Apr. 1, 2000–Jun. 30, 2000	9%
Jul. 1, 2000–Sep. 30, 2000	9%
Oct. 1, 2000–Dec. 31, 2000	9%
Jan. 1, 2001–Mar. 31, 2001	9%
Apr. 1, 2001–Jun. 30, 2001	8%
Jul. 1, 2001–Sep. 30, 2001	7%
Oct. 1, 2001–Dec. 31, 2001	7%
Jan. 1, 2002–Mar. 31, 2002	6%

TABLE OF CORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	6%
Apr. 1, 1999–Jun. 30, 1999	7%
Jul. 1, 1999–Sep. 30, 1999	7%
Oct. 1, 1999–Dec. 31, 1999	7%
Jan. 1, 2000–Mar. 31, 2000	7%
Apr. 1, 2000–Jun. 30, 2000	8%
Jul. 1, 2000–Sep. 30, 2000	8%
Oct. 1, 2000–Dec. 31, 2000	8%
Jan. 1, 2001–Mar. 31, 2001	8%
Apr. 1, 2001–Jun. 30, 2001	7%
Jul. 1, 2001–Sep. 30, 2001	6%
Oct. 1, 2001–Dec. 31, 2001	6%
Jan. 1, 2002 –Mar. 31, 2002	5%

See Revenue Ruling 2001–63, 2001–52 Internal Revenue Bulletin (I.R.B.) 606 (Dec. 26, 2001), 2001 WL 1563674 (IRS RRU). For interest in subsequent quarters, interested parties must use subsequent IRS Revenue Rulings.

5. In the *First Report and Order,* 61 FR 52307 (Oct. 7, 1996), the Commission used annual toll revenue as a basis for allocation between the carriers of the duty to pay a specified amount per payphone per month as interim compensation. The court in *Illinois* rejected this allocation methodology and required that the compensation obligation be based on payment for the payphone services received by that particular carrier. Consequently, the Commission must establish a nexus between the allocation methodology and the number of payphone calls routed to a specific carrier. The Commission is still considering the numerous proposals for various allocation methodologies received in this proceeding, CC Docket No. 96–128. Comments filed in this proceeding analyzing various proposed allocation methodologies emphasized the lack of a nexus between each proposed allocation methodology and the number of payphone calls routed to any specific carrier. For this reason, in letters dated December 20, 2001, the Common Carrier Bureau requested that Qwest, Verizon, BellSouth and SBC submit, no later than January 22, 2002, the number of call attempts designated by coding digits of 27 (dumb payphone) or 70 (smart payphone), routed to an interexchange carrier point of presence or handled entirely by the Regional Bell Operating Company facilities, for 1997, 1998, and fiscal year 2001 (beginning October 1, 2000 and ending September 30, 2001). Now that the record in this proceeding was supplemented, this specific call tracking data should allow the Commission to determine an allocation of the per-payphone compensation obligations. The Commission realized that this would effectively defer the determination of compensation owed for the interim and intermediate periods until it establishes a reasonable allocation methodology. To avoid further delay, however, in establishing some of the preconditions for per-payphone compensation, and to provide the industry with some guidance as to how the Commission intends to proceed, the Commission decided to adopt this Order at this time.

6. The Commission will determine in a subsequent order the issue of offsets of interim and intermediate overpayments as contemplated in the *Third Report and Order,* 64 FR 13701 (Mar. 22, 1999), and additional issues remanded in *Illinois,* such as an allocation methodology for per-payphone compensation, and the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or operating division. *See Remand Public Notice,* 62 FR 43686 (Aug. 15, 1997).

Paperwork Reduction Act Analysis

7. This Order was analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. It contains no new or modified information collections subject to Office of Management and Budget review.

Supplemental Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* in CC Docket No. 96–128, 61 FR 31481 (June 20, 1996). The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order,* 61 FR 52307 (Oct. 7, 1996), the *First Reconsideration Order,* 61 FR 65341 (Dec. 12, 1996), the *Second Report and Order,* 62 FR 58659 (Oct. 30, 1997), and the *Third Report and Order,* 64 FR 13701 (Mar. 22, 1999).

9. This present Supplemental FRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

10. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the Order preceding the Supplemental FRFA, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

11. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * *'' In this Order, the Commission redetermined, pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in the *Illinois* decision, certain aspects of the per-payphone compensation that interexchange carriers (IXCs) and local exchange carriers (LECs) must pay to payphone service providers (PSPs). *Illinois,* 117 F.3d. at 555.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

12. The Commission received no comments in direct response to the FRFA in the *Third Report and Order.* The Commission believes that the rules as adopted in this Order minimize the burdens of the per-payphone compensation scheme to the benefit of all parties, including small entities. *See* ''Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered,'' *infra.*

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

13. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rules adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

14. The Commission included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. According to the most recent *Telephone Trends Report* data, 1,335 incumbent LECs reported that they were engaged in the provision of local exchange services. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001) (*Telephone Trends Report*), Table 5.3. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,037 or fewer providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

16. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier

services. *Telephone Trends Report,* Table 5.3. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 297 or fewer providers of competitive local exchange service are small entities that may be affected by the rules.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 ''Other Local Exchange Carriers'' reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report,* Table 5.3. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* Of the 60 ''Other Local Exchange Carriers,'' 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these companies that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of CAPS or ''Other Local Exchange Carriers'' that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer small entity ''Other Local Exchange Carriers'' that may be affected by the rules.

18. *Local Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report,* Table 5.3. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of local resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 86 or fewer small business local resellers that may be affected by the rules.

19. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report,* Table 5.3. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these toll resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of toll resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

20. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 758 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these PSPs that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

21. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 163 or fewer small entity interexchange carriers that may be affected by the rules.

22. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.

Telephone Trends Report, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these operator service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer small entity operator service providers that may be affected by the rules.

23. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report*, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these prepaid calling card providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of prepaid calling card providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer small business prepaid calling card providers that may be affected by the rules.

24. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. Under that SBA definition, such a business is small if it has $11 million or less in average annual receipts. 13 CFR 121.201, NAICS code 513340. According to the Commission's most recent *Telephone Trends Report data*, 21 carriers reported that they were engaged in the provision of satellite services. *Telephone Trends Report*, Table 5.3. Of these 21 carriers, 16 reported that they have 1,500 or fewer employees and five reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of satellite service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 16 or fewer small business satellite service carriers that may be affected by the rules.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 17 carriers reported that they were engaged in the provision of ''Other Toll Services.'' *Telephone Trends Report*, Table 5.3. Of these 17 carriers, 15 reported that they have 1,500 or fewer employees and two reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these ''Other Toll Carriers'' that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of ''Other Toll Carriers'' that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 15 or fewer small business ''Other Toll Carriers'' that may be affected by the rules.

26. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Paging or Cellular and Other Wireless Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513322. According to the Commission's most recent *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. *Telephone Trends Report*, Table 5.3. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

27. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996); see also 47 CFR 24.720(b). For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996). These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566 (July 22, 1994). No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97–82, *Second Report and Order*, 62 FR 55348 (Oct. 24, 1997). Based on this

information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F Block auctions, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *800 MHz and 900 MHz Specialized Mobile Radio Licensees*. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules.

29. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this Supplemental FRFA, the Commission uses the SBA's definition applicable to wireless companies, *i.e.*, an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules.

30. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

31. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not defined a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, the Commission utilizes the SBA's definition applicable to wireless companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

32. *39 GHz Licensees*. The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998). An additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id*. The SBA approved these regulations defining ''small entity'' in the context of 39 GHz auctions. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that there are 18 or fewer small entities that are 39 GHz licensees that may be affected by the rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. As mandated by the court in the *Illinois* decision, the Commission established in this Order a compensation scheme for inmate telephone service during the interim period, if the payphone service provider (PSP) was not otherwise compensated for its inmate service. In a correctional institution, the PSP presubscribes the inmate telephones to a specific interexchange carrier (IXC) pursuant to a contract between the PSP and the interexchange carrier. If this previously existing contract failed to establish a duty to count and track inmate calls for compensation purposes, or if the presubscribed IXC failed to retain its records of the number of compensable inmate calls originating during the interim period for which compensation now must be paid according to this Order, the Commission established a

waiver procedure that provides the maximum amount of flexibility for the presubscribed IXC and the PSP, including small IXCs and small PSPs, to propose the number of inmate calls to be compensated. According to this waiver provision, the IXC presubscribed during the interim period must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific PSP to be compensated is allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number. With this exception for those situations in which the number of compensable inmate calls for the interim period is not available, this Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. To minimize the economic impact and administrative burden for both payors and recipients of payphone compensation, including small entities, the Commission required the payment of a flat fee of $33.892 per payphone per month for access code and subscriber 800 calls originating from November 7, 1996 through October 6, 1997, for all payphones. For the same reason, the Commission also set compensation at a flat fee of $33.892 per payphone per month for access code and subscriber 800 calls originating from October 7, 1997 through April 20, 1999, for those payphones for which compensation is or was not paid on a per-call basis. The payment of a prescribed flat fee of $4.2747 per payphone per month for 0+ calls originating from November 7, 1996 through October 6, 1997, to PSPs that were not otherwise compensated for 0+ calls during the interim period, minimizes the economic impact and administrative burden for both IXCs and PSPs, including small entities.

35. Some of both payors and recipients of payphone compensation are small entities. Over time, the Commission learned that steps taken to minimize the economic impact on payors of payphone compensation that are small entities diminish the compensation received by recipients of payphone compensation that are small entities. This decrease in compensation contradicts one of the mandates of section 276 that PSPs should receive compensation for each and every completed call originating at one of their payphones. For example, to ease the burden of implementing the per-call payphone compensation scheme on midsize and small local exchange carriers, the Common Carrier Bureau granted a waiver in 1998 to relieve such entities of the economic burden of installing flexible automatic number identification (FlexANI) software on their switches. If the PSP uses ''smart'' payphones, the payphone calls of small PSPs routed through these particular switches lacking FlexANI software cannot be counted, tracked, and compensated on a per-call basis. As a result, compensation must be paid on a per-payphone, not per-call, basis. The Bureau limited such payphone compensation to 16 calls per month, even if a small payphone service provider's payphone calls are more than 200 calls per payphone per month at a truck stop, for example, instead of 16 payphone calls per month. *Bureau Per-call Waiver Order,* 63 FR 26497 (May 13, 1998). At a rate of $0.229 per payphone call as calculated in this Order, compensation would be limited to $3.664 per payphone per month starting on November 7, 1996 through April 20, 1999. At the rate of $0.24 per payphone call as calculated in the *Third Report and Order,* compensation would be limited to $3.84 per payphone per month after April 20, 1999. Accordingly, the Commission found it necessary in this Order to balance the equities between these two groups of small entities.

36. In another example of the Commission's attempt to ease an economic impact, in 1996 the Commission exempted LECs and IXCs with annual toll revenues of $100 million or less from the economic and administrative burdens of paying per-payphone compensation. The U.S. Court of Appeals for the District of Columbia Circuit vacated this determination as arbitrary and capricious in the *Illinois* decision, partially because it would deprive recipients of payphone compensation of approximately $4 million per month, according to the court. *Illinois,* 117 F.3d at 565. After the *Illinois* decision, the Commission was asked again to exempt carriers with annual toll revenues of $100 million or less from the economic and administrative burdens of paying interim compensation. In the alternative, the Commission was asked to exempt carriers with monthly toll revenues of $1 million or less from the economic and administrative burdens of paying interim compensation. In this Order, the Commission followed the mandates of the court in the *Illinois* decision and decided not to exempt carriers based on the amount of toll revenue.

Report to Congress

37. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Ordering Clauses

38. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, *It is ordered* that the policies, rules and requirements set forth herein *Are Adopted.*

39. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Fourth Order on Reconsideration and Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers,

Telecommunications, Telephone. Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218–220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Add § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated

agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for the period starting on November 7, 1996 and ending on October 6, 1997, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(b) *Interim 0+ calls.* In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of $4.2747 per payphone per month, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim inmate calls.* In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of $0.229 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, for the period starting on October 7, 1997 and ending on April 20, 1999.

(e) *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is $33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, on or after April 21, 1999.

[FR Doc. 02–4979 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[FCC 02–40]

Implementation of LPTV Digital Data Services Pilot Project

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the provisions of LPTV Pilot Project Digital Data Services Act, which requires the Commission to implement regulations establishing a pilot project. This document also clarifies and revises issues raised in a Petition for Response to Reconsideration of the Implementation Order filed by U.S. Interactive, L.L.C., d/b/a AccelerNet.

DATES: Effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Policy and Rules Division, Mass Media Bureau, (202) 418–2120; or Keith Larson, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (''*Order*'') in FCC 02–40, adopted February 12, 2002 and released February 14, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.*

Synopsis of Order

I. Introduction

1. In April, 2001 we released an *Order* implementing the provisions of the LPTV Pilot Project Digital Data Services Act (DDSA), (*Order,* In the Matter of Implementation of LPTV Digital Data Services Pilot Project, FCC 01–137, 66 FR 29040 (May 29, 2001)). The DDSA requires the Commission to issue regulations establishing a pilot project pursuant to which specified Low Power Television (LPTV) licensees or permittees can provide digital data services to demonstrate the feasibility of using LPTV stations to provide high-speed wireless digital data service, including Internet access, to unserved areas (Public Law 106–554, 114 Stat. 4577, December 21, 2000, Consolidated Appropriations—FY 2001, section 143, amending section 336 of the Communications Act of 1934, as amended, 47 U.S.C. 336, to add new subsection (h). 47 U.S.C. 336(h)(7)). As defined by the DDSA, digital data service includes: (1) Digitally-based interactive broadcast service; and (2) wireless Internet access (47 U.S.C. 336(h)(7)). The DDSA identifies twelve specific LPTV stations that are eligible to participate in the pilot project, and directs the Commission to select a station and repeaters to provide service to specified areas in Alaska. In this *Order,* we address issues raised in a petition for reconsideration of the *Order* filed by U.S. Interactive, L.L.C., d/b/a AccelerNet, and revise provisions of that *Order* in some respects. AccelerNet is an LPTV licensee providing one-way digital data service in Houston, Texas, from station KHLM–LP, and operating stations that are eligible to participate in DDSA pilot projects. Its investors own or have rights to acquire six of the other eight stations eligible for the pilot projects.

II. Discussion

A. Term of Pilot Project

2. In the *Order,* we noted that the DDSA does not specify how long the pilot project should last. Since the DDSA specified that our last report to Congress evaluating the utility of the pilot project is due on June 30, 2002, we clarified that we will issue experimental letter authorizations for the pilot project that will expire on June 30, 2002, unless the term is extended prior to that date. We delegated authority to the Mass Media Bureau to extend the term of the authorizations for individual participants or for participants as a group, and to do so by Public Notice, in the event that it is determined that the

term of the pilot project should be extended.

3. In its petition, AccelerNet asserts that the Commission should grant conditional pilot project licenses for the term of the underlying LPTV station license, including any renewals, subject only to early termination of the pilot project license if irremediable interference occurs, rather than experimental licenses. AccelerNet asserts that the statute implicitly requires the Commission to allow operation of the pilot projects on an indefinite basis, subject to termination only if interference occurs which cannot otherwise be remedied. According to AccelerNet, inclusion of a sunset provision in the *Order* would cause the demise of the project. It contends that investors are reluctant to finance pilot projects; that equipment manufacturers will not be willing to develop necessary equipment needed by the project; that several years will be needed to implement and demonstrate the utility of the project; and, finally, that the pilot project is intended to ultimately provide a needed service that should not be sunsetted if it works. To support its assertion, it first argues that Congress would not have provided for annual fees if the pilot projects were intended to be of limited duration. It observes that a provision in the statute at section 336(h)(6) for annual fees to be paid by stations participating in the pilot projects is similar to the provision for annual fees to be paid by digital television stations offering ancillary or supplementary services at section 336(e). Second, AccelerNet argues, although Congress expressly provided for termination under certain conditions, those conditions did not include a time limit (citing sections 336(h)(3)(C) (Commission to adopt regulations providing for termination or limitation of any pilot project station or remote transmitter if interference occurs to other users of the core television spectrum) and 336(h)(5)(A) (Commission may limit provision of digital data service from pilot project stations if interference is caused)). It contends that a sunset provision was considered and specifically rejected during drafting negotiations. (Asserting a sunset provision was specifically rejected when section 336(h) and the DDSA were legislated). Finally, AccelerNet argues, the statutory dates specified for the Commission to issue reports concerning the efficacy of the pilot projects are unrelated to any supposed term of the pilot projects. (The Commission was required to report back to Congress on June 30, 2001 and June 30, 2002. *See* section 336(h).) Rather, it claims, the reporting requirements exist to enable Congress to determine whether to expand the provision of digital data services to all or some additional portion of LPTV stations.

4. On reconsideration, we have decided to revise our provisions regarding the terms of the pilot project. Rather than issue experimental letter authorizations, the procedure we described in the *Order,* we will allow the LPTV stations that are eligible for the pilot project to participate in the pilot project for the term of their LPTV licenses, including renewals of those licenses, subject to early termination if irremediable interference occurs, pursuant to the statute.

5. Pursuant to § 74.731(g) of our rules, LPTV stations may operate as TV translator stations, or to originate programming and commercial matter, either through the retransmission of a TV broadcast signal or via original programming (47 CFR 74.731(g); *see* also 47 CFR 74.701(f)). To allow the pilot project stations to participate in the project, we will grant them a waiver of this rule (47 CFR 1.3, ''Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown''). The waiver will be renewable with the renewal of the underlying LPTV license. All other LPTV rules will be applicable to these stations, except as waived herein or upon request by pilot project participants, or as specified in the *Order.* (We will waive the following rules as inapplicable to the services provided under this pilot project: 47 CFR 74.731(g) (permissible service), 74.732(g) (booster eligibility), 74.736(a) (emissions), 74.750(a) (FCC transmitter certification), 74.751(a) (modification of transmission systems), 74.761 (frequency tolerance), and 74.763(c) (time of operation)).

6. As stated, this is a pilot project. Pilot project stations will operate pursuant to their LPTV licenses instead of experimental letter authorizations. To obtain a waiver of § 74.731(g), pilot project-eligible stations should follow the application procedures specified in paragraph 8 of the *Order.* Rather than filing an application for experimental authority, a DDSA-eligible applicant should file an informal letter application requesting the addition of digital data service pilot project facilities to its existing LPTV authorization and including the information requested in that paragraph. We will also require them to undertake the testing described in paragraph 10, and to include the information requested in that paragraph in their applications so that we may assess the interference potential of this service. No application filing fee is required to add or modify pilot project digital facilities. We will issue a waiver by letter adding pilot project facilities to the LPTV authorization for the term of the LPTV license, renewable with that license, after following the public notice procedures specified in paragraph 18 of the *Order.* Paragraph 19 of the *Implementation Order,* regarding facilities changes, will continue to apply. Applications to change channel or transmitter site location(s) must be filed in the normal manner on FCC Form 346, seeking a modified construction permit for the underlying analog facilities of the licensed LPTV station or a modification of such facilities in an existing analog LPTV station construction permit. The application for modification of analog facilities is feeable. Following grant of the change in such authorized LPTV facilities, an associated informal application to modify the pilot project portion of the authorization will be considered in accordance with the above procedures. This two step process is necessary because, where interference protection to digital data services is required, the protected area is that defined by the analog LPTV service contour (47 CFR 74.707(a)), based on the authorized analog LPTV facilities, an associated informal application to modify the pilot project portion of the authorization will be considered). All other requirements of the *Order* apply unless changed herein.

7. Additionally, and as AccelerNet observes, the DDSA specifies that a station may provide digital data service unless provision of the service causes interference in violation of the Commission's existing rules to full-service analog or digital television stations, Class A television stations, or television translator stations. In keeping with these provisions in the DDSA, we will not renew any waiver to operate pursuant to the pilot project if the station requesting renewal causes irremedial interference to other stations.

8. We find that it is in the public interest to grant these waivers generally based on the intent of Congress in the DDSA that it is in the public interest to establish this pilot project. In the *Order,* we stated that we would extend the term of the pilot projects, by Public Notice and on delegated authority, upon a determination that the term of the pilot project should be extended. We intended to use this process so that the original term of the pilot projects could be extended with minimal difficulty, and did not intend that the term would

automatically expire after June 30, 2002. Nonetheless, we recognize that the limited term specified in the *Order* could pose problems with establishing the project, as AccelerNet described, because investors may be unwilling to invest without greater certainty, particularly in the current challenging economic climate, and that it may take longer to develop the equipment than originally contemplated. It is also conceivable, as AccelerNet contends, that equipment manufacturers might be less willing to develop the equipment needed by the project without the certainty of a longer initial term. Moreover, as AccelerNet argues, it is possible that implementing and proving the practicality of the project could require a period of years. Accordingly, to assure that our procedures do not undermine the establishment of the pilot project, we will instead base the license terms of the pilot project stations on the terms of the underlying LPTV licenses and grant the necessary rule waivers, subject to the interference prohibitions in the statute and as delineated in the *Order.* (We wish to make clear that this is a pilot project, and the decisions made herein are not intended to prejudge any future decisions on digital operation on LPTV stations generally).

9. We recognize that Congress wanted to give the pilot project a fair opportunity to succeed. The DDSA does not contain a sunset date; it is, therefore, legally permissible to make the term of the pilot project coincident with the term of the LPTV license, subject to early termination in the event of irremediable interference. (Although Congress specified particular subjects for which it wanted the Commission to issue rules in section 336(h)(3), that section does not direct the Commission to issue a sunset rule for the pilot projects. Likewise, no time limitation is specified in sections 336(h)(1), which allows pilot project stations to ask the Commission to provide digital data service or in section 336(h)(5)(b), which allows a licensee to move a station to another location for the purpose of the pilot projects). Our goal is to implement the statute while assuring that no objectionable interference occurs. Granting renewable waivers is not overly burdensome to participants in the pilot project, and it serves the purpose of ensuring that others are protected from interference.

10. To assure that the project does not cause interference, we will not only assess issues of interference that may arise in connection with the filing of the renewal application, but in addition the interference resolution provisions of paragraph 11 of the *Order* will apply. Paragraph 11 requires stations participating in the pilot project to comply with § 74.703 of the Commission's rules regarding interference. It also specifies additional procedures that participating stations must follow in order to resolve interference problems in accordance with requirements set forth in the DDSA). We clarify that we have authority to take any measures, including terminating digital data service waivers and therefore requiring the discontinuance of the participation of any station in the project in the event of irremediable interference. LPTV stations are secondary and must provide interference protection as described in paragraph 8 of the *Order.* The waivers will be conditioned accordingly.

B. Application of Experimental Rules

11. In the *Order,* we stated our belief that requirements similar to those contained in §§ 5.93(a) and (b) of the rules should apply to the pilot program. (No other provisions of part 5 of the Commission's rules were applied). Thus, we required that all transmitting and/or receiving equipment used in the pilot program be owned by, leased to, or otherwise under the control of the LPTV licensee (47 CFR 5.93(a)). We said that response station equipment may not be owned by subscribers to the experimental data service to insure that the LPTV licensee has control of the equipment if and when the pilot program terminates. In addition, we required the LPTV licensee to inform anyone participating in the experiment, including but not limited to subscribers or consumers, that the service or device is provided pursuant to a pilot program and is temporary (47 CFR 5.93(b)).

12. AccelerNet argues that the requirement that all transmitting and receiving equipment be owned by the licensee is unwarranted and not required or contemplated by the DDSA. It also objects to the requirement that the LPTV licensee shall inform anyone participating in the project that the service is temporary. These requirements were necessary under our rules governing experimental licensees. Because we are, on reconsideration, treating this endeavor not as an experimental project with an initial term of only 2 years, but as a unique pilot project that is a part of the underlying LPTV license and is for the term of that license, §§ 5.93(a) and (b) are no longer applicable because there is no longer the concern that the project will be terminated after only 2 years. We do not intend to unnecessarily restrict the ability of the pilot projects to gain market acceptance, make it difficult for the licensees to gauge subscriber acceptance of the service, or be unduly burdensome considering the other risks assumed by licensees in a pilot project. We will require pilot project licensees and permittees to advise recipients of digital data service that they are participating in a pilot project, which could be terminated in the event of irremedial interference to protected broadcast and other services. AccelerNet has stated that it has no objection to this requirement.

C. RF Safety Rules

13. In the *Order,* we said that we will require pilot project licensees and permittees employing two-way technology to attach labels to every response station transceiver (fixed or portable) in a conspicuous fashion visible in all directions and readable at distances beyond the minimum separation distances between the radiating equipment and the user. For fixed response stations, we also concluded that their effective radiated power (ERP) should be as low as is consistent with satisfactory communication with a base station, and in no case should the ERP (digital average power) exceed 10 watts. For portable response stations, we similarly concluded that their ERP should be as low as is consistent with satisfactory communication with a base station, and in no case should the ERP (digital average power) exceed 3 watts.

14. *Labeling.* AccelerNet argues that the requirement that RF station transceivers be marked to indicate potential radio frequency hazards should not apply where the transmit power of the transceiver is so low as to present no safety hazard at any distance. It contends that requiring marking in those circumstances is overregulatory, and could unnecessarily raise concerns among potential subscribers, causing the pilot project to fail from lack of consumer acceptance. Arguing that its portable devices are not expected to exceed one watt in power, it contends that the Commission's current rules sufficiently protect the public (citing 47 CFR 2.10093 [''Radiofrequency radiation exposure evaluation; portable devices.'']). It argues that the *Order* should be revised to provide that portable devices shall comply with the provisions of § 2.1093 of the Commission's rules (47 CFR 2.1093), including the radiation exposure limitations set forth in § 2.1093(d)(2).

15. We agree with the petitioner that RF safety rules for digital data service devices should be consistent with existing rules for similar devices.

However, similar devices that are used as subscriber transceivers and marketed to the public have been subject to labeling requirements to alert consumers to the presence of RF energy and to ensure that safe distances from transmitting antennas are maintained (47 CFR 1.1307(b)). Such devices have generally been classified as ''mobile'' devices under our rules, not as ''portable'' devices. For purposes of determining how to evaluate RF devices for compliance with the Commission's RF safety rules, non-fixed devices have been classified as either ''mobile'' or ''portable,'' based on the separation distance between radiating structures and users (this is defined in 47 CFR 2.1091 and 2.1093 and is discussed in the FCC's OET Bulletin 65, (1997)). A classification of ''mobile'' means that compliance with the Commission's RF safety rules can be accomplished by providing users with information on safe distances to maintain from transmitting antennas in order to meet field intensity limits for Maximum Permissible Exposure (MPE).

16. The petitioner proposes to have digital data service devices be subject to the provisions of § 2.1093, the section of our rules which specifies requirements for devices classified as ''portable'' in terms of compliance with the Commission's limits for localized Specific Absorption Rate (SAR). For a device to be classified as ''portable'' it is assumed that it is possible for the separation distance between the radiating structure of the device and a user to be less than 20 cm during transmit operation. Compliance with the SAR limit (the general population limit of 1.6 watts per kilogram in this case) is typically determined by means of laboratory testing (*see* Supplement C (2001) to the FCC's OET Bulletin 65 (1997) for details). We agree that the response stations used in connection with the pilot project can be classified as ''portable'' devices and subject to the provisions of § 2.1093, as long as the appropriate SAR data are obtained and made available to the Commission demonstrating compliance with the SAR limit. A determination of ''worst case'' exposure would be indicated by evaluating SAR with a zero separation distance. If compliance with the SAR limit is demonstrated in this condition, using maximum operating power, then labeling would not be required, since no separation distance would be required for compliance. On the other hand, if a certain separation distance (less than 20 cm) is required for compliance with the SAR limit, then the applicant will have to demonstrate that a user cannot be exposed closer than that distance.

17. Accordingly, we will require portable response stations used in connection with the pilot project to comply with the RF exposure limits and related provisions of § 2.1093 of our rules, relevant to devices subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. Although we have not required that these devices be subject to equipment authorization, applicants must submit to the Commission evidence of compliance with the SAR limits specified in § 2.1093, including information on how any required separation distances, as discussed above, will be maintained. Based on our previous experience in analyzing SAR from portable devices, we will not require SAR testing and will categorically exclude from routine RF evaluation devices that do not radiate a power level in excess of 50 milliwatts.

D. Technical Operation

18. In the *Order,* we anticipate the possibility that several types of transmission facilities may be involved in each pilot project station. First, we expect that most, if not all, of these projects will involve digital transmissions from a main base station at the authorized site of the underlying LPTV station. Unless the evaluation of its digital modulation method requires otherwise, we would assume that operation of such a facility will not represent a significantly increased interference threat compared to the authorized LPTV station if the antenna height is not increased and the digital average power does not exceed 10 percent of the authorized analog LPTV power (10 dB less power). We noted that in DTV service, this level of digital power is adequate to provide coverage of the same area. We said that the Commission's staff will not evaluate at the application stage the interference potential of a main digital base station conforming to this restriction.

19. In the *Order,* we said that the second type of transmission facility might consist of one or more additional base stations (boosters) located at sites away from the authorized LPTV transmitter site. We decided to treat such stations as we treat analog TV booster stations except that each booster may originate its own data messages. As such, we noted our expectation that such facilities would be limited to a site location, power and antenna height combination that would not extend the coverage area of the main base station in any direction. We stated that we would require an exhibit demonstrating that booster coverage is contained within main base station coverage, based on the digital field strength predicted from the main base station at the protected contour of the underlying analog LPTV authorization. Further, we stated that we would assume at the application stage that such an operation will not cause additional interference unless an interference situation is demonstrated in an informal objection to the application. We said that, absent such an objection, the Commission's staff will not evaluate at the application stage the interference potential of an additional digital base station conforming to this restriction.

20. *Digital Power Issue.* AccelerNet asks the Commission to allow UHF LPTV pilot project stations to transmit with up to 15kW average digital power if existing interference protection criteria are met. AccelerNet argues that the provision in the *Order* could be read to limit average digital power to 10 percent of the authorized analog power of the underlying LPTV station. It states that discussion with staff indicates that this was not intended, and asks that the Commission clarify that this is the case. It adds that a 10 percent limit would be an unjustified restriction on provision of its service, because, under the rules, UHF LPTV stations are limited to 15 kW average digital power if existing interference protection criteria are met (47 CFR 74.735(b)(2)). It asks that the *Order* be clarified to allow operation up to 15 kW average digital power if existing interference protection criteria are met.

21. *Boosters.* AccelerNet urges the Commission to allow booster stations to operate at any point within the existing authorized coverage contours of the main base station, provided that no interference to protected stations would be created. It asks that some degree of flexibility be provided for the location of booster stations to allow LPTV stations to cover natural market areas associated with their communities of license, but which may be outside their existing coverage contours. It suggests that booster stations be allowed to operate at any point within the existing authorized coverage contours of the main base station, provided that no interference to protected stations would be created, and provided that the pilot project stations would not be entitled to interference protection outside their existing authorized service contours of the underlying analog LPTV authorization.

22. On reconsideration of both these issues, we reach the same conclusion, of which there are two parts. First we deal with the interference protection that must be afforded to the LPTV stations

participating in this pilot project. Second, we deal with the interference protection that pilot project stations must afford to all other stations that are entitled to protection.

23. Interference protection of a pilot project station will be limited to the analog TV protected contour of the underlying LPTV station. That underlying LPTV station authorization may be modified in accordance with the LPTV rules and procedures. When and if the LPTV rules are amended to allow digital LPTV authorizations, the underlying analog LPTV station may be converted to a digital LPTV authorization in accordance with those rules. Pilot project authorizations for digital power in excess of 10 percent of the underlying analog LPTV station power will not entitle the station to any additional interference protection. Similarly, booster station authorizations that may allow the pilot project station to provide service in areas beyond the underlying LPTV protected contour will not entitle the pilot project station to additional interference protection.

24. As requested, we clarify that a pilot project station is not limited to an effective radiated power that is 10 percent or less than that of the analog power of the associated LPTV station. A pilot project station will be assumed at the application stage to provide the required interference protection to other stations if it conforms to the 10 percent of the LPTV analog power criterion and any booster stations do not extend the analog LPTV authorized protected contour. Requests for greater pilot project power, up to the 15 kilowatt effective radiated power limit for UHF digital LPTV stations, or for boosters located within the analog LPTV protected contour extending the pilot project service beyond the analog protected contour, must include a showing that no interference is predicted to any other service that is entitled to protection. (The digital effective radiated power limit in the LPTV rules for VHF station is 300 watts (47 CFR 74.735(b)(1)). Pilot project booster stations may be located anywhere within the protected contour of the underlying analog LPTV authorization based on a showing of noninterference to protected stations. On this basis we will not prohibit a booster from extending service beyond the protected contour.

III. Administrative Matters

25. *Paperwork Reduction Act Analysis*. This *Order on Reconsideration* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Order*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due May 3, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov*.

26. *Final Regulatory Flexibility Analysis*. No regulatory flexibility analysis is required because the rules adopted in the *Order* and this *Order on Reconsideration* were adopted without notice and comment rule making.

27. *Congressional Review Act*. These rules, promulgated without notice and comment rule making, are not subject to the provisions of the Congressional Review Act.

IV. Ordering Clauses

28. Pursuant to the authority contained in sections 1, 2(a), 4(i), 7, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 1, 2(a), 4(i), 7 and 336, part 74 of the Commission's rules, 47 CFR part 74, *is amended* as set forth.

29. The rule amendments set forth *shall be effective February 14, 2002*.

30. The petition for reconsideration filed by U.S. Interactive, L.L.C., *is granted* to the extent discussed herein, and otherwise is *denied*.

31. This proceeding is *terminated*.

List of Subjects in 47 CFR Part 74

Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

Subpart G—Low Power TV, TV Translator, and TV Booster Stations is amended to read as follows:

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

2. Section 74.785 is revised to read as follows:

§ 74.785 Low power TV digital data service pilot project.

Low power TV stations authorized pursuant to the LPTV Digital Data Services Act (Public Law 106–554, 114 Stat. 4577, December 1, 2000) to participate in a digital data service pilot project shall be subject to the provisions of the Commission *Order* implementing that Act. FCC 01–137, adopted April 19, 2001, as modified by the Commission *Order on Reconsideration*, FCC 02–40, adopted February 12, 2002.

[FR Doc. 02–4978 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 42
Monday, March 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A30, AO–380–A18; DA–01–08]

Milk in the Pacific Northwest and Western Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124	Pacific Northwest.	AO–368–A30
1135	Western	AO–380–A18

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk orders. Proposals pertaining to the Pacific Northwest order include redefining the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards and eliminating the ability of handlers to pool the same milk under more than one marketwide pool. Proposals to amend the Western order would provide for net shipments for pool supply plant qualification, increase the cooperative pool plant delivery performance standard, eliminate the proprietary bulk tank unit provision, reduce the diversion allowance for producer milk and calculate diversions on a net basis, and establish transportation and assembly credit provisions. Other proposed amendments to the Western order would redefine the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards, eliminate the ability of handlers to pool the same milk under more than one marketwide pool, and clarify the proprietary bulk tank handler, producer, and producer milk definitions. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Tuesday April 2, 2002.

ADDRESSES: The hearing will be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax).

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250–0231, (202)690–1366, e-mail address: Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Joanne Walter at email *jwalter@fmmaseattle.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax), beginning at 8:30 a.m., on Tuesday, April 2, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000 or produces less than 500,000 pounds of milk per month, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has

jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with three copies of such exhibits for the Official Record.Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR Parts 1124 and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department of Agriculture.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Proposals No. 1 and 2 Pertain only to the Pacific Northwest Order.

Proposed by: Northwest Dairy Association

Proposal No. 1

Amend the Producer definition in ''1124.12 to prevent the pooling of the same milk under the Pacific Northwest Federal order and a State marketwide order at the same time by adding a new paragraph (b)(6) to read as follows:

§ 1124.12 Producer.

* * * * *

(b) * * *

(6) A dairy farmer whose milk is pooled on a state order with a marketwide pool.

Proposed by Dairy Farmers of America

Proposal No. 2

Amend the pool supply plant and producer milk definitions to require that milk from ''distant'' locations be reported by individual state units, each of which would be subject to the performance standards applicable to supply plants and producer milk by adding a new paragraph (c)(5) in § 1124.7 and redesignating '' 1124.13 paragraph (e)(5) as (e)(6) and adding a new paragraph (e)(5) to read as follows:

§ 1124.7 Pool Plant.

* * * * *

(c) * * *

(5) If milk is delivered to a plant physically located outside the State of Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) At least the required minimum percentage and delivery requirements specified in § 1124.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1124.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.7(c)(1); and

(iii) The percentages of § 1124.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1124.7(g).

* * * * *

§ 1124.13 Producer Milk.

* * * * *

(e) * * *

(5) Milk receipts from producers whose farms that are physically located outside the State of Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1124.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.13(c); and

(iii) The percentages of § 1124.13(e)(5) are subject to any adjustments that may be made pursuant to § 1124.13(e)(6).

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

Proposals 3 through 16 pertain only to the Western Order.

Proposals 3 Through 9 Proposed by Dairy Farmers of America

Proposal No. 3

Establish a ''net shipment'' provision applicable to deliveries to pool distributing plants as well as pool supply plants by adding a new paragraph (c)(5) in '' 1135.7 to read as follows:

§ 1135.7 Pool plant.

* * * * *

(c) * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by distributing pool plants, less any transfers of bulk fluid milk products from such distributing pool plants.

* * * * *

Proposal No. 4

Increase the cooperative pool plant provision delivery performance standard from 35% to 50% by revising '' 1135.7 paragraph (d) to read as follows:

§ 1135.7 Pool plant.

* * * * *

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 50 percent or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph, subject to the following conditions:

* * * * *

Proposal No. 5

Eliminate the bulk tank handler provision in the Western order by removing '' 1135.11.

Proposal No. 6

Reduce the amount of producer milk eligible for diversion to nonpool plants from 90 percent to 70 percent by revising '' 1135.13 paragraph (d)(2) to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 70 percent;

* * * * *

Proposal No. 7

Amend diversion percentages in '' 1135.13 be calculated on a net basis and to be applicable to both pool supply plants and nonpool plants, by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), and adding a new paragraph (d)(3) to '' 1135.13 to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(3) Receipts used in determining qualifying percentages shall be milk transferred to, diverted to, or delivered from farms of producers pursuant to § 1000.9(c) and physically received by plants described in § 1135.7(a) or (b), less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

Proposal No. 8

Establish a partially offset intra-order transportation credit provision that will allow shipments traveling distances in excess of a number of miles representing a ''typical'' base hauling distance for the area to receive credit from the marketwide pool for supplying the Class I needs of the market. Credit would be limited to producers physically located within the marketing area. Payment would be made to the milk supplier. An assembly credit would be applied to milk delivered to distributing plants. The reporting requirements of the order, in §§ 1135.30 and 1135.32, would be amended to accommodate the transportation and assembly credit provisions. This would be accomplished by adding new paragraphs (a)(5) and (c)(3) in § 1135.30, redesignating the introductory text in § 1135.32 as paragraph (a) and republishing it and adding a paragraph (b) and adding a new § 1135.55 to read as follows:

§ 1135.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of producer milk described in § 1135.55 (d), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1135.55, all of the information required in paragraph (a)(5) of this section.

§ 1135.32 Other Reports.

(a) In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

(b) On or before the 21st day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1135.30(a)(5).

§ 1135.55 Transportation credits and assembly credits.

(a) Payments for the transportation of and assembly of milk supplies for pool distributing plants to cooperative associations and handlers that request them shall be made as follows:

(1) On or before the 14th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received and reported pursuant to § 1135.30(a)(5) milk directly from producers' farms, a preliminary amount determined pursuant to paragraph (b) and/or (c) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 21st day of the month following the month for which such credits were requested pursuant to § 1135.32(a). After such date, a preliminary audit will be conducted by the market administrator. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments will remain subject to the final computation established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1135.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives bulk milk directly from farms of producers described in § 1135.12 that are located within the marketing area, shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (d) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .38 cents times the number of miles between the receiving plant and the farm less 80 miles;

(3) Subtract from the effective Class I price at the receiving plant the effective Class I price of the county that the farm is located in;

(4) Multiply any positive amount resulting from the subtraction in paragraph (b)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (b)(4) of this section from the amount computed in paragraph (b)(2) of this section. If the amount computed in paragraph (b)(4) of this section exceeds the amount computed in paragraph (b)(2) of this section, the transportation credit shall be zero.

(c) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (d) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 5 cents.

(d) The following procedure shall be used to determine the amount of milk

eligible for transportation and assembly credits pursuant to paragraphs (b) and (c) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk other source milk received at the pool distributing plant that is assigned to Class I pursuant to § 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to bulk physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c);

(iii) Handlers described in § 1135.11; and

(iv) Other pool plants.

(e) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

(f) In the case of a direct ship farm load the distance shall be measured from the farm on the route that results in the fewest miles. It shall be the responsibility of the reporting handler to designate such farm and for the purpose of computing mileages, the city closest to that farm.

Proposal No. 9

Amend §§ 1135.7 and 1135.13 to establish state unit standards for milk from ''distant'' supply locations. Add a new paragraph (c)(3) to the pool supply plant definition in § 1135.7, redesignate § 1135.13 paragraph (d)(6) as paragraph (d)(7) and add a new paragraph (d)(6) to the producer milk definition to read as follows:

§ 1135.7 Pool plant.

* * * * *

(c) * * *

(3) If milk is delivered to a plant physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) At least the required minimum percentage and delivery requirements specified in section § 1135.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1135.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1135.7(c); and

(iii) The percentages of § 1135.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1135.7(g).

* * * * *

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(6) Milk receipts from producers whose farms that are physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1135.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1135.13(c); and

(iii) The percentages of § 1135.13(d)(6) are subject to any adjustments that may be made pursuant to § 1135.13(d)(7).

* * * * *

Submitted by Northwest Dairy Association

Proposal No. 10

Prevent producers who share in the proceeds of a state marketwide pool from simultaneously sharing in the proceeds of a federal marketwide pool on the same milk in the same month by amending the Producer provision in § 1135.12 by adding a new paragraph (b)(6) to read as follows:

§ 1135.12 Producer.

* * * * *

(b) * * *

(6) A dairy farmer whose milk is pooled on a state order with a market widepool.

Proposals 11 through 13, submitted by Meadow Gold Dairies, are to be considered as alternatives.

Assure that Class I handlers make uniform payments for their raw milk purchases by amending the proprietary bulk tank handler provision or by amending the provision regarding payments to producers and to cooperative associations.

Proposal No. 11

Amend § 1135.11 by adding paragraph (c) to read as follows:

§ 1135.11 Proprietary bulk tank handler.

* * * * *

(c) Milk defined as producer milk pursuant to § 1135.13(a) shall be reported and considered as producer milk at the pool plant where received.

Proposal No. 12

Amend § 1135.73 by revising paragraphs (b), introductory text, and (b)(1) and adding a new paragraph (b)(5) to read as follows:

§ 1135.73 Payments to producers and cooperative associations.

* * * * *

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association or a proprietary bulk tank handler for milk received as follows:

(1) *Partial payment to a cooperative association or a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of a cooperative

association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, and for bulk milk received directly from producers' farms and delivered during the first 15 days of the month for the account of proprietary bulk tank handler pursuant to § 1135.11, the payment to the cooperative association or proprietary bulk tank handler shall be an amount not less than 1.2 times the lowest class price for the proceeding month multiplied by the hundredweight of milk.

* * * * *

(5) *Final payment to a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For the total quantity of bulk milk received directly from producers' farms and delivered during the month for the account of a proprietary bulk tank handler pursuant to § 1135.11, the final payment to the proprietary bulk tank handler for such milk shall be at not less than the total value of such milk as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (b)(5)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

* * * * *

Proposal No. 13

Amend § 1135.73 by revising paragraph (a) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer, including each producer from whom milk moved direct from the farm in a truck under the control of a handler defined under § 1135.11, from whom milk is received during the month as follows:

* * * * *

Proposals 14—16 submitted by the Market Administrator.

Proposal No. 14

Clarify the Proprietary bulk tank handler definition by revising the introductory text of § 1135.11 to read as follows:

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to a pool plant described in § 1135.7(a) or § 1135.7(b) of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

* * * * *

Proposal No. 15

Clarify the Producer definition by revising § 1135.12 paragraph (b)(5) to read as follows:

§ 1135.12 Producer.

* * * * *

(b) * * *

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any class other than Class II, Class III, or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as *a dairy farmer for other markets.*

Proposal No. 16

Clarify the Producer milk definition by revising § 1135.13 paragraph (d)(1) to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless one day's milk production has been physically received as producer milk at a pool plant during the month;

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service.

Proposal No. 17

For both the Pacific Northwest and the Western orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there. Copies may also be obtained at the USDA–AMS website at http://www.ams.usda.gov/dairy/

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Market Administrator of the Pacific Northwest and Western Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time

Dated: February 26, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–5073 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–70–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposed AD would require you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at each elevator tip rib for corrosion; and either remove the corrosion or replace a corroded elevator tip rib depending on the corrosion damage. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this proposed AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 29, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 97–CE–70–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports incidents of corrosion found in the area of the elevator tip rib underneath the mass balance weights on several of the above-referenced airplanes.

What Are the Consequences if the Condition Is Not Corrected?

These conditions, if not detected and corrected, could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

Is There Service Information That Applies to This Subject?

De Havilland has issued Beaver Service Bulletin Number 2/50, dated May 9, 1997 (applicable to Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); and Beaver Service Bulletin Number TB/58, dated May 9, 1997 (applicable to Model DHC–2 Mk. III airplanes).

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—modifying the elevator tip rib on each elevator;

—repetitively inspecting underneath the mass balance weights at the elevator tip rib for corrosion; and

—either removing the corrosion or replacing the corroded elevator tip rib depending on the corrosion damage.

What Action Did Transport Canada Take?

Transport Canada classified these service bulletins as mandatory and issued AD No. CF–97–06, dated May 28, 1997, in order to ensure the continued airworthiness of these airplanes in Canada.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, Transport Canada has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of Transport Canada; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service

information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at the elevator rib tip for corrosion; and either remove the corrosion or replace the corroded elevator tip rib depending on the corrosion damage.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 160 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
13 workhours × $60 = $780	No parts cost required	$780	$780 × 160 = $124,800.

These figures only take into account the proposed modification and initial inspection costs and do not take into account the costs of any of the proposed repetitive inspections or the cost to replace any elevator tip rib that would be found corroded past a certain extent. We have no way of determining the number of repetitive inspections each owner/operator would incur over the life of each affected airplane or the number of elevator tip ribs that would need to be replaced.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 6 calendar months after the effective date of this AD''.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

We have determined that a calendar time compliance is the most desirable method because the unsafe condition described in this proposed AD is caused by corrosion. Corrosion develops regardless of whether the airplane is in service and is not a result of airplane operation. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

De Havilland Inc.: Docket No. 97–CE–70–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes: cut an access hole and install an access cover and ring doubler on the elevator tip rib of each elevator.	Within the next 6 calendar months after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver fabricate and Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(2) For all affected airplanes: inspect underneath the mass balance weights at each elevator tip rib for corrosion.	Within the next 6 calendar months after the effective date of this AD and thereafter at intervals not to exceed 5 years.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(3) For all affected airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is equal to or less than 0.004 inches depth, remove the corrosion.	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(4) For all affected airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth, accomplish one of the following:	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(i) use the procedures in the service bulletin to manufacture a new tip rib, part number 2DKC2–TE–77, and replace the affected tip rib with this new tip rib; or.	.....	
(ii) replace any affected elevator tip rib with a part number (P/N) C2–TE–103AND elevator tip rib. You may obtain a P/N C2–TE–103AND elevator tip rib. You may obtain a P/N C2–TE–103AND elevator tip rib from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	.....	
(5) In addition to the above for the affected DHC–2 MK III airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth on the channel, accomplish one of the following:	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997.
(i) use the procedures in the service bulletin to manufacture a new channel replacement, part number 2DKC2TE1020–13, and replace the affected channel with new channel; or.	.....	
(ii) replace the channel with a part number (P/N) C2–TE–89ND channel. You may obtain a P/N C2–TE–89ND channel from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	.....	

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, New York Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Canadian AD No. CF–97–06, dated May 28, 1997.

Issued in Kansas City, Missouri, on February 21, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5004 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Regulatory Review; Notice of Intent To Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission (''Commission'') rules and guides, the Commission gives notice that it intends to request public comments on the rule and guides listed below during 2002. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rule and guides; possible conflict between the rule and guides and state, local, or other federal laws or regulations; and the effect on the rule and guides of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rule and guides should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for the particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rule and guides during 2002:

(1) *Guides Concerning Use of Endorsements and Testimonials in Advertising,* 16 CFR 255. Agency Contact: Richard Cleland, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3088.

(2) *Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles,* 16 CFR 309. Agency Contact: Neil Blickman, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3038.

As part of its ongoing program to review all current Commission rules and guides, the Commission also has tentatively scheduled reviews of other rules and guides for 2003 through 2011. A copy of this tentative schedule is appended. The Commission may in its discretion modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE

16 CFR Part	Topic	Year to review
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2002
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2002
228	Tire Advertising and Labeling Guides	2003
304	Rules and Regulations under the Hobby Protection Act	2003
600	Statements of General Policy or Interpretations Under the Fair Credit Reporting Act	2003
18	Guides for the Nursery Industry	2004
410	TV Picture Tube Size Rule	2004
424	Retail Food Store Advertising and Marketing Practices Rule	2004
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2005
311	Recycled Oil Rule	2005
312	Children's Online Privacy Protection Rule	2005
444	Credit Practices Rule	2005
455	Used Car Rule	2005
24	Guides for Select Leather and Imitation Leather Products	2006
435	Mail or Telephone Order Merchandise Rule	2006
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act (''FPLA'')	2006
501	Exemptions from Part 500 of the FPLA	2006
502	Regulations Under Section 5(c) of the FPLA	2006
503	Statements of General Policy or Interpretations Under the FPLA	2006
305	Appliance Labeling Rule	2007
306	Automotive Fuel Ratings, Certification and Posting Rule	2007
429	Cooling Off Rule	2007
601	Summary of Consumer Rights, Notice of User Responsibilities, and Notice of Furnisher Responsibilities under the Fair Credit Reporting Act.	2007
254	Guides for Private Vocational and Distance Education Schools	2008
260	Guides for the use of Environmental Marketing Claims	2008
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2008
301	Rules and Regulations under the Fur Products Labeling Act	2008
303	Rules and Regulations under the Textile Fiber Products Identification Act	2008
425	Rule Concerning the Use of Negative Option Plans	2008

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE—Continued

16 CFR Part	Topic	Year to review
239	Guides for the Advertising of Warranties and Guarantees	2009
433	Preservation of Consumers' Claims and Defenses Rule	2009
700	Interpretations of Magnuson-Moss Warranty Act	2009
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2009
702	Pre-sale Availability of Written Warranty Terms	2009
703	Informal Dispute Settlement Procedures	2009
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2010
423	Care Labeling Rule	2010
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2011
233	Guides Against Deceptive Pricing	2011
238	Guides Against Bait Advertising	2011
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2011
251	Guide Concerning Use of the Word ''Free'' and Similar Representations	2011
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2011

[FR Doc. 02–5124 Filed 3–1–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to the advance notice of proposed rulemaking that was published in the **Federal Register** on Thursday, January 24, 2002 (67 FR 3461) that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits.

DATES: This correction is effective January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew J. Keyso, (202) 927–9397 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking that is the subject of this correction is under section 263(a) of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking (REG–125638–01) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the advance notice of proposed rulemaking (REG–125638–01), which is the subject of FR Doc. 02–1678 is corrected as follows:

On page 3464, column 1, line 7, the language *''J.J. Case Company* v. *United States, 32''* is corrected to read *''J.I. Case Company* v. *United States, 32.''*

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–5111 Filed 3–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–251502–96]

RIN 1545–AU68

Civil Cause of Action for Certain Unauthorized Collection Actions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to Internal Revenue Code section 7433 that was published in the **Federal Register** on Wednesday, December 31, 1997. The proposed regulations implemented provisions of the Taxpayer Bill of Rights 2 (TBOR2). TBOR2 raised the cap on damages under section 7433 and eliminated the jurisdictional prerequisite requiring a taxpayer to exhaust administrative remedies before filing a civil damage action.

FOR FURTHER INFORMATION CONTACT: Kevin Connelly, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, December 31, 1997, the IRS issued proposed regulations titled Civil Cause of Action for Certain Unauthorized Collection Actions (62 FR 68242). Because the Internal Revenue Service Restructuring and Reform Act of 1998 substantially amended section 7433, including sections that TBOR2 had previously amended, we are withdrawing these proposed regulations (REG–251502–96). A new notice of proposed rulemaking containing both the statutory provisions of TBOR2 and RRA1998 with respect to damage actions under section 7433, as well as section 7426, has been opened.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, December 31, 1997 (62 FR 68242) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5112 Filed 3–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule; public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule on conditions for appropriate use and audit policy for transactions for prototype projects published in the **Federal Register** at 66 FR 58422 on November 21, 2001.

DATES: The meeting will be held on March 27, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association (NCMA), which is located at 1912 Woodford Road, Vienna, Virginia 22182. Directions to NCMA are available at *http://www.acq.osd.mil/dp/dsps/ot/pr.htm*.

FOR FURTHER INFORMATION CONTACT: David Capitano, Office of Cost, Pricing, and Finance, by telephone at 703–602–4245, by FAX at 703–602–0350, or by e-mail at *david.capitano@osd.mil*.

SUPPLEMENTARY INFORMATION: The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues pertaining to the proposed rule on Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects published in the **Federal Register** at 66 FR 58422 on November 21, 2001. A listing of some of the possible issues for discussion, as well as copies of the written public comments submitted in response to the November 21, 2001 proposed rule, are available at *http://www.acq.osd.mil/dp/dsps/ot/pr.htm*.

Dated: February 27, 2002.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–5157 Filed 2–28–02; 11:52 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2001–10486]

RIN 2115–AG21

Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard seeks comments on the development of a ballast water treatment goal, and an interim ballast water treatment standard. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996 require the Coast Guard to regulate ballast water management practices to prevent the discharge of shipborne ballast water from releasing harmful nonindigenous species into U.S. waters of the Great Lakes, and to issue voluntary guidelines to prevent the introduction of such species through ballast water operations in other waters of the U.S. These Acts further provide that the Coast Guard must assess compliance with the voluntary guidelines and if compliance is inadequate must issue regulations that make the guidelines mandatory. These guidelines and regulations must be based on open ocean ballast water exchange and/or environmentally sound alternatives that the Coast Guard determines to be at least as ''effective'' as ballast water exchange in preventing and controlling infestations of aquatic nuisance species (ANS). The Coast Guard will use the public's comments to help define a ballast water treatment goal and standard, both of which are essential parts of determining whether alternative ballast water management methods are environmentally sound and at least as effective as open ocean ballast water exchange (BWE) in preventing and controlling infestations of ANS.

DATES: Comments and related material must reach the Coast Guard on or before June 3, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10486), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call Dr. Richard Everett, Project Manager, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone 202–267–0214. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Other NISA Rulemaking to Date

This rulemaking follows the publication of the Final Rule (USCG–1998–3423) on November 21, 2001 (66 FR 58381), for the Implementation of the National Invasive Species Act of 1996, that finalizes regulations for the Great Lakes ecosystems and voluntary ballast water management guidelines for all other waters of the United States, including reporting for nearly all vessels entering waters of the United States. Both rules follow the publication of the notice and request for comments for Potential Approaches To Setting Ballast Water Treatment Standards (USCG–2001–8737) on May 1, 2001, notice and request for comments on Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems (USCG–2001–9267) on May 22, 2001, and the publication of notice of meetings; request for comments on The Ballast Water Management Program (USCG–2001–10062) on July 11, 2001.

Request for Comments

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify the docket number for this rulemaking (USCG–2001–10486), and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Don't submit the same comment or attachment more than once. Don't submit anything you consider to be confidential business information, as all comments are placed in the docket and are thus open to public inspection and duplication. The Coast Guard will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We have no plans for any public meetings, unless you request one. Some of the information that helped us prepare this notice came from the following meetings that have already been held: meetings of the Ballast Water and Shipping Committee (BWSC) of the Federal Aquatic Nuisance Species Task Force; the workshop on ballast water treatment standards sponsored by the Global Ballast Water Program (Globallast) of the International Maritime Organization (IMO) in March 2001; and two technical workshops we held in April and May 2001. If you want a meeting, you may request one by writing to the Docket Management Facility at the address under **ADDRESSES.** Explain why you think a meeting would be useful. If we determine that oral presentations would aid this rulemaking, we will hold a public hearing at a time, date, and place announced by later notice in the **Federal Register**.

Background and Purpose

Congress, in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directs the Coast Guard to issue regulations and guidelines for ballast water management (BWM). The goal of BWM is to prevent discharged ballast water from introducing harmful nonindigenous species (NIS) to U.S. waters.

Responding to NANPCA's directive, we published a final rule (58 FR 18330, April 8, 1993). It mandated ballast water treatment (BWT) for the Great Lakes. These requirements appear in 33 CFR part 151, subpart C, and were later extended to include the Hudson River north of the George Washington Bridge (59 FR 67632, December 30, 1994), as required by the statute. In 1999, responding to NISA's directive, we published an interim rule (64 FR 26672, May 17, 1999) that sets voluntary BWM guidelines for all other U.S. waters, and BWM reporting requirements for most ships entering U.S. waters.

NANPCA and NISA require BWT to be executed by mid-ocean ballast water exchange (BWE), or by a Coast Guard-approved alternative BWT method. The alternative BWT must be at least as effective as BWE in preventing and controlling infestations of aquatic nuisance species (ANS). Therefore, in order to evaluate the effectiveness of alternative BWT methods, the Coast Guard must first define for programmatic purposes what ''as effective as [BWE]'' means. The purpose of this notice, in part, is to present for public comment various approaches to clarifying this term.

On May 1, 2001, we published a notice and request for public comments (66 FR 21807) that invited comment on four conceptual approaches to BWT standards for assessing relative effectiveness to BWE, and posed questions, all of which were developed in meetings of the BWSC. The comments we received revealed a wide range of opinion (see ''*Comments on the May 1, 2001, Notice*'' below), indicating the need for more discussion.

The present notice reflects comments received in response to the May 1, 2001 notice. It also draws on information taken from the Globallast workshop (March 2001). Finally, it draws on discussions of the four conceptual BWT approaches by participants invited to the April and May 2001 Coast Guard workshops. (The report of the Globallast workshop is available at *http://globallast.imo.org*. Reports from the Coast Guard workshops, when completed, will be available at *http://dms.dot.gov*.)

Comments on the May 1, 2001, Notice

We received 22 written responses to our May 1, 2001 request for comments, which set out 4 optional approaches for BWT standards, posed 5 questions related to setting the standard, and posed 3 questions relating to implementation issues. We will summarize responses to the implementation questions when we propose a specific implementation approach and testing protocol at a later date. Here are the questions we asked about setting standards, along with a summary of the comments we received, and our response.

1. *Should a standard be based on BWE, best available technology [BAT], or the biological capacity of the receiving ecosystem? What are the arguments for, or against, each option*? Thirteen respondents specifically addressed this question. Five commenters, all associated with the shipping industry, recommended that a quantification of the effectiveness of BWE be used to set the standard. All five also stated that the language of NISA dictates this approach. Four commenters favored a BAT approach. Four commenters favored a biological capacity approach.

Participants in both the Globallast and Coast Guard workshops recommended against basing a ballast water treatment standard on the effectiveness, either theoretical or measured, of BWE. The Globallast report on the findings of the workshop stated: ''It is not appropriate to use equivalency to ballast water exchange as an effectiveness standard for evaluating and approving/accepting new ballast water treatment technologies, as the relationship between volumetric exchange and real biological effectiveness achieved by ballast water exchange is extremely poorly defined. This relationship cannot be established without extremely expensive empirical testing.'' Participants in the two Coast Guard workshops recommended that standards be based on the level of protection needed to prevent biological invasions. The recommendations are neither endorsed nor discredited by the Coast Guard.

2. *If BWE is the basis for a standard, what criterion should be used to quantify effectiveness: the theoretical effectiveness of exchange, the water volume exchanged (as estimated with physical/chemical markers), the effectiveness in removing or killing all or specific groups of organisms, or something else; and why*? Twelve commenters specifically addressed this question. None of the 12 thought that theoretical efficacy should be used. Three recommended using volumetric effectiveness, and five considered measured effectiveness in killing/removing organisms to be the most appropriate measure. One commenter thought that all three metrics should be used, and four commenters re-expressed their opinion that exchange should not be the basis for the standard.

3. *How specifically should the effectiveness of either BWE or best available technology be determined (i.e., for each vessel, vessel class, or across all*

vessels) before setting a standard based on the capabilities of these processes? Ten respondents specifically addressed this question. One commenter recommended determining the effectiveness of exchange on a ship-by-ship basis, two thought effectiveness should be calculated for different ''risk classes'' of vessels or sectors of the shipping industry, one recommended that exchange be evaluated with hydrodynamic models before being evaluated on test vessels, and six advocated the use of a broad average effectiveness calculated across many types of vessels and trading patterns.

4. *What are the advantages and disadvantages of considering the probability of conducting a safe and effective BWE on every voyage when estimating the overall effectiveness of BWE*? Eleven respondents specifically addressed this question. Six comments came from vendors of ballast water treatment systems or from public and private resource protection entities. Five of these said the probability of conducting an exchange must be considered at some level, in order to better represent BWE's ''real world'' capability. The sixth said we should take only completed exchanges into account, because class societies could not attest to the effectiveness of systems when safety exemptions were considered. All five shipping industry commenters also advocated looking only at completed exchanges, because too many variables affect whether or not a full exchange can be conducted. The Coast Guard considers the feasibility of conducting a mid-ocean exchange to be one of the significant issues in evaluating BWE.

5. What are the advantages and disadvantages of expressing a BWT standard in terms of absolute concentrations of organisms versus the percent of inactivation or removal of organisms? Twelve respondents specifically addressed this question. Several expressed concern that if ballast water were taken on in a location with a very low concentration, the vessel might not have to use any treatment to meet a concentration standard. Conversely, several commenters argued that a high percentage reduction in organisms, when the initial concentration was very high, could still result in the discharge of a high concentration of organisms. These concerns should be kept in mind when commenting on the alternative standards presented below. It is important to note that, for purposes of testing the theoretical effectiveness of a technology, if testing is conducted using the highest expected natural concentrations of organisms as the concentrations in the test medium (as recommended by participants in the Globallast and the USCG workshops), the percent reduction approach effectively becomes a concentration approach. This is because the standard percent reduction (for example, 95%) of an absolute concentration produces an absolute concentration of remaining organisms. On the other hand, for purposes of assessing compliance with the standard at the level of an individual vessel, the two approaches could have very different results.

Further Comments Needed

We seek more comments because the discussion of BWT standards has focused, until now, on the suitability of basing standards on existing technology, rather than on developing new technology that better meets the congressional intent of eliminating ballast water discharge as a source of harmful NIS.

As we noted above, the governing statutes (NANCPA and NISA) specify the use of BWE and provide that any alternative form of BWT be at least as effective as BWE in preventing and controlling the spread of ANS. At present, no alternatives have been approved, in part, perhaps, because the effectiveness of the BWE benchmark itself is not well defined. Furthermore, concerns have been voiced that mid-ocean BWE is difficult to quantify in practice, cannot be safely performed on all transoceanic voyages, and by current definition cannot be conducted on voyages that take place within 200 miles of shore and in waters shallower than 2000 meters deep.

There are only limited scientific data on the effectiveness of BWE. A few empirical studies (see references: 5, 13, 14, 15, 18) listed in this notice, indicate that BWE results in the actual exchange of 88% to 99% of the water carried in a ballast tank. The average result is quite close to the theoretical 95% efficiency of Flow-Through Exchange.

However, knowing that we exchanged 88–99% of the water does not necessarily tell us we eliminated 88–99% of the danger of ANS remaining in the ballast tank. Some of the empirical studies (see references: 5, 13, 14, 15, 18) also looked at that aspect of BWE. They found that BWE resulted in reducing the number of organisms by varying degrees, from 39% to 99.9%, depending on the taxonomic groups and ships studied.

The variability in this data reflects the fact that the studies involved different ships under experimentally uncontrolled conditions, used different methods of calculating the percentage of water exchanged, and used different taxonomic groups to evaluate BWE's effectiveness in reducing the presence of ANS.

Technical experts at the Coast Guard and IMO workshops, and comments by the National Oceanic and Atmospheric Administration, agree that scientifically determining even the quantitative effectiveness of BWE (leaving aside its qualitative effectiveness) will be challenging.

We think Congress viewed BWE as a practical but imperfect tool for treating ballast water, and wanted to ensure that approved alternatives would not be less effective than BWE is known to be. As currently practiced, BWE produces varying results and sometimes may remove as few as 39% of the possible harmful organisms from the ballast tank. BWE is affected by a number of variables, cannot be used on coastal voyages (as currently defined), and often cannot be used by a ship on any of it's voyages due to safety concerns.

The Coast Guard is currently considering an approach in which an alternative BWT method would be judged to be at least as effective as BWE if it:

- Produces predictable results,
- Removes or inactivates a high proportion of organisms,
- Functions effectively under most operating conditions, and
- Moves toward a goal that expresses the congressional intent to eliminate ballast water discharge as a source of harmful NIS.

In this notice, we are seeking comments that will help us define the standards and goals that would meet these criteria.

Issues for further comment

Your comments are welcome on any aspect of this notice, including the submission of alternative goals or standards that were not presented in today's notice. The possible goals and standards presented here are intended to stimulate discussion that will ultimately lead to a standard for assessing BWT effectiveness that will have broad scientific and public support. We particularly seek your input on the ''Questions'' we raise below. The Questions (Q1–Q6) refer to the following possible Goals (G1–G3) and Standards (S1–S4).

Possible Goals

G1. No discharge of zooplankton and photosynthetic organisms (including holoplanktonic, meroplanktonic, and demersal zooplankton, phytoplankton and propagules of macroalgae and

aquatic angiosperms), inclusive of all life-stages. For bacteria, Enterococci and Escherichia coli will not exceed 35 per 100 ml and 126 per 100 ml of treated water, respectively.

G2. Treat for living organisms at least to the same extent as drinking water.

G3. Ballast water treatment technologies would demonstrate, through direct comparison with ballast water exchange, that they are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species for the vessel's design and route.

Possible Standards

S1. Achieve at least 95% removal, kill or inactivation of a representative species from each of six representative taxonomic groups: vertebrates, invertebrates (hard-shelled, soft shelled, soft-bodied), phytoplankton, macro-algae. This level would be measured against ballast water intake for a defined set of standard biological, physical and chemical intake conditions. For each representative species, those conditions are:

- The highest expected natural concentration of organisms in the world as derived from available literature and
- A range of values for salinity, turbidity, temperature, pH, dissolved oxygen, particulate organic matter, and dissolved organic matter. (GLOBALLAST PROPOSAL ''A''.)

S2. Remove, kill or inactivate all organisms larger than 100 microns in size. (GLOBALLAST PROPOSAL ''B''.)

S3. Remove 99% of all coastal holoplanktonic, meroplanktonic, and demersal zooplankton, inclusive of all life-stages (eggs, larvae, juveniles, and adults). Remove 95% of all photosynthetic organisms, including phytoplankton and propagules of macroalgae and aquatic angiosperms, inclusive of all life stages. Enterococci and Escherichia coli will not exceed 35 per 100 ml and 126 per 100 ml of treated water, respectively. (COAST GUARD WORKSHOP PROPOSAL ''A''.)

S4. Discharge no organisms greater than 50 microns in size, and treat to meet federal criteria for contact recreation (currently 35 Enterococci/ 100 ml for marine waters and 126 E. coli /100 ml for freshwaters). (COAST GUARD WORKSHOP PROPOSAL ''B''.)

Note: The capability of current technology to remove or kill 95%–99% of the zooplankton or phytoplankton, or to remove 100% of organisms larger than 50 or 100 microns, under the operational flow and volume conditions characteristic of most commercial ocean-going vessels, is not well established. Workshop participants felt these removal efficiencies are practical and realistic initial targets. BWT to these levels would provide increased protection compared to no BWT at all, or to BWE carried out only when vessel design and operating conditions permit.

Questions

In answering the questions, please refer to Questions, Goals, and Standards by their designations (for example: Q1, G2, S3).

The following questions refer to the goals (G1–G3) and standards (S1–S4) set out in ''Issues for Further Comment,'' above.

Q1. Should the Coast Guard adopt G1, G2, G3, or some other goal (please specify) for BWT?

Q2. Should the Coast Guard adopt any of the standards, S1–S4 as an interim BWT standard? (You also may propose alternative quantitative or qualitative standards.)

Q3. Please provide information on the effectiveness of current technologies to meet any of the possible standards. Please comment, with supporting technical information if possible, on the workshop participants' assessment that these standards are ''practical and realistic initial targets''.

Q4. General comments on how to structure any cost-benefit or cost-effectiveness analysis that evaluates the above four possible standards. We are requesting comments on how the Coast Guard should measure the benefits to society of the above possible standards in either qualitative or quantitative terms. How would the benefits be measured considering each possible standard would continue to allow the introduction of invasive species, but at different rates? What would the costs be to industry in each of the four proposals? How would the cost to industry differ by possible standard?

Q5. What impact would the above four standards have on small businesses that own and operate vessels?

Q6. What potential environmental impacts would the goals or standards carry?

Issues for Future Consideration

The possible goals and standards in today's notice set out basic biological parameters for the discharge of aquatic organisms ranging from bacteria to higher taxonomic groups and are intended to provide a starting point for discussion. If the framework for addressing BWT effectiveness that is discussed in this notice were adopted, the final standards would be derived from a process that incorporates the expertise of the scientific community.

We know that many practical problems will need to be addressed in setting up a program for testing and approving BWT alternatives. We think it is premature to ask for comments on these issues until an approach (or at least an interim approach) for assessing BWT effectiveness is chosen, because many procedural aspects of the testing process will be dependent on the specific nature of the selected approach. However, we may ultimately need to address issues such as using standard indicators as evaluation tools, as participants in both Globallast and the Coast Guard workshops recommended. This would depend on:

- Identifying and validating species or physical/chemical metrics that can be used as practical and efficient standard indicators. This in turn would depend on:
- Improving sampling and analytic techniques by:
- Setting detection limits and degrees of statistical uncertainty for methods and protocols used to enumerate the abundance of organisms in treated ballast water, and on
- Setting standard testing conditions for the concentrations of indicators and a suite of physical and chemical parameters. For example, testing might be based on what the available literature shows to be the highest expected natural concentration in the world for each indicator species or variable under a range of conditions for other parameters. (This approach was recommended by participants in both the Globallast and USCG workshops.) The suite of parameters would include turbidity, dissolved and particulate organic material, salinity, pH, and temperature.

Preliminary Regulatory Evaluation

At this early stage in the process, the Coast Guard cannot anticipate whether any proposed or final rules will be considered significant, economically or otherwise, under Executive Order 12866 or under the Department of Transportation regulatory policies and procedures [44 FR 11034, February 26, 1979]. At this time, the economic impact of any regulations that may result from this notice cannot be accurately determined. The Coast Guard plans to use comments received on this advance notice of proposed rulemaking to assess these economic impacts. We will then prepare either a regulatory assessment or a detailed regulatory evaluation as appropriate, which will be placed in the docket.

To facilitate the comment process on this notice, Table 1 below presents cost information compiled from recent technical literature on ballast water technologies. Several points should be noted when reviewing this information.

First, these cost estimates are not all expressed in a constant unit. Comparisons of estimates across studies, therefore, should be conducted with caution. Second, cost estimates from the Cawthron (1998) and Agriculture, Fisheries, and Forestry—Australia (2001) reports are converted from Australian dollars based on exchange rates published October 16, 2001 ($0.5136 AUD = $1.00 US Dollar). Third, these cost estimates are not expressed in constant dollars; they have not been adjusted for inflation. Finally, these costs are derived primarily through experimental and pilot projects, not actual application in the field.

At this time, the Coast Guard does not endorse any of these studies in any way; we have not yet conducted detailed cost-benefit analysis on this subject. We are making this information available to facilitate public discussion of the questions that we are posing above. We also welcome any comments and supporting documentation, pertaining to the cost estimates summarized below.

TABLE 1.—COST ESTIMATES FOR BALLAST WATER ALTERNATIVE TECHNOLOGIES FROM THE RECENT LITERATURE

Ref.	Technology	Cost	Remark
1	Ballast water exchange	$4.79–$7.28 per cubic meter	Costs are reduced approximately 50 percent if gravity ballasting can be accomplished.
4	Ballast water exchange	$4,500 fuel cost per exchange	56,000 tons of ballast water flow through 3 volumes; time for exchange about 3 days.
4	Ballast water exchange	$3,100–$8,800 for fuel and pump maintenance per exchange.	Estimates for conditions on container ships, bulk carriers, and two types of tankers; 3 dilutions; time for exchange ranged from 33 to 55 hours.
4	Ballast water exchange	$16,000–$80,000 total cost of exchange.	Estimates for conditions on VLCC and Suezmax bulker.
9	Ballast water exchange	Qualitative discussion of cost implications.	Time lost during transit.
16	Ballast water exchange	$0.02–$0.10 per metric ton of ballast water.	Estimates based on study of California ports.
1	Onshore treatment facility	$0.66–$27.00 per cubic meter	Cost estimates driven by additional infrastructure required in ports.
6	Onshore treatment facility	$1.4 billion for entire treatment facility	Facility in Valdez, Alaska; only ballast water treatment facility currently in use in U.S.; covers 1,000 acres of land, processes about 16m gallons of ballast water daily.
6	Onshore treatment facility	$9m–19m for infrastructure; $0.09–$0.41 per metric ton of ballast water treated.	Estimate based on port-based facility located on land or a floating platform.
9	Onshore treatment facility	Qualitative discussion of cost implications.	Costs minimized in onshore facility located where vessels are already required to stop for customs and quarantine inspection; time delay for docking and deballasting.
16	Onshore treatment facility	$7.6m–$49.7m for infrastructure; $142,000–$223,000 for annual maintenance; $1.40–$8.30 per metric ton of ballast water treated.	Estimates based on study of California ports.
1	Thermal treatment	$10.83–$17.52 per cubic meter	Heating/flushing process.
6	Thermal treatment	Qualitative discussion of cost implications.	Very expensive labor and materials cost to retrofit heating coils in ballast tanks; if additional heat generation required then fuel consumption increases.
11	Thermal treatment	$75,000–$275,000 per system	Most cost effective in warmer waters.
1	UV treatment	$31.66–$186.53 per cubic meter	Low cost estimate represents UV used alone; high cost estimate reflects combination with hydrocyclone.
2	UV treatment	$10,200–$545,000 per system for infrastructure; $2,200–$11,000 per system for annual maintenance.	Cost estimates for 1,200 GPM and 8,000 GPM systems.
7	UV treatment	$250,000–$1m life-cycle per treatment system.	Study part of technology demonstration project.
9	UV treatment	Qualitative discussion of cost implications.	Capital investment very high; cost for installation and pipe modifications.
1	Chemical treatment	$0.47–$77.88 per cubic meter	Estimate based only on operating cost.
7	Chemical treatment	$2m–$4m life-cycle per treatment system.	Study part of technology demonstration project.
9	Chemical treatment	Qualitative discussion of cost implications.	Installation and engineering of chemical dosing system is expensive; low cost effectiveness; large capital investment.
9	Filtration	Qualitative discussion of cost implications.	Large capital investment; cost of disposal of concentrated filtrate.
8	Rapid response	$1.5m per strike	Australia, method involved quarantine of the port and destruction of organisms when detected on a vessel in port.

As with the cost information provided above, the Coast Guard does not currently endorse any of these studies in any way; we have not yet conducted our own detailed assessment of their methodologies and results. Rather, we are making this information available to facilitate public discussion of the questions that we are posing above. We

also welcome any comments, and supporting documentation pertaining to the damage estimates summarized below.

Aquatic Nuisance Species

Adverse environmental and economic effects of some ANS have been documented in a number of studies. As with the cost information provided above, the Coast Guard does not currently endorse any of these studies in any way; we have not yet conducted our own detailed assessment of their methodologies and results. Rather, we are making this information available to facilitate public discussion of the questions that we are posing above. We also welcome any comments, and supporting documentation pertaining to the damage estimates summarized below.

The most studied species, the zebra mussel, has affected the ecology and economy of the Great Lakes since introduction in the late 1980s. Some scientists believe the mussel is responsible for ''profound changes in the lower food web of the Great Lakes'' and massive algal blooms (see reference: 3). Zebra mussels may clog intake pipes for industrial and municipal plants, and may cause extended shut downs in order to chemically treat the pipes. In the Great Lakes basin, the annual cost of zebra mussel control has been estimated at from $100 to $400 million. Dramatically altering the Great Lakes ecosystems, zebra mussels have now spread throughout the Mississippi River drainage basin, thousands of inland lakes, and are threatening the West Coast (see reference: 3). There is evidence that The San Francisco and Chesapeake Bays, Gulf of Mexico, and Hawaiian coral reef may be threatened by other non-indigenous fish, mollusks, crustaceans, and aquatic plants (see reference: 3). A 1999 report (see reference: 12) estimates that the environmental damage caused by non-indigenous species in the United States (both land and water) is $138 billion per year. The report further states that there are approximately 50,000 foreign species and the number is increasing. It is estimated that about 42% of the species on the Threatened or Endangered species lists are at risk primarily because of non-indigenous species.

The above damage estimate pertains to all non-indigenous species, both land and water. Table 2 below, adapted from the report (see reference: 12), presents estimates of the annual damages and costs of aquatic species in the United States.

TABLE 2.—ONE ESTIMATE OF THE TOTAL ANNUAL COST OF AQUATIC INVASIVE SPECIES IN BILLIONS OF DOLLARS

[See reference: 12]

Species	Total [1]
Aquatic weeds	$0.110
Fish	1.000
Green crab	0.044
Zebra mussel	5.000
Asian clam	1.000
Shipworm	0.205
Total	7.359

[1] Total annual cost of species.

Small Entities

We are unable, at this time, to determine whether, under the Regulatory Flexibility Act (5 U.S.C. 601–612), any regulations resulting from this ANPRM would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that a rule establishing standards for evaluating the effectiveness of BWT would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this ANPRM so that they can better evaluate its potential effects on them and participate in the rulemaking. If you believe that this ANPRM could lead to a final regulation that would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please contact Dr. Richard Everett where listed under **FOR FURTHER INFORMATION CONTACT**, above.

Collection of Information

Any final rule resulting from this ANPRM could call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.). At this time we are unable, however, to estimate the number of responders or the burden of responding on each responder. We will include our estimates of this information in a later notice of proposed rulemaking and allow for comments on those estimates before issuing a final rule. As always, you are not required to respond to an information collection unless it displays a valid OMB approval number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have not yet analyzed whether any rule resulting from this ANPRM would have implications for federalism, but we are aware of efforts by various states to stem invasive species in their waters. We will continue to consult with the states through the Ballast Water Working Group.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As stated above, we do not yet know the costs that would be associated with any rule resulting from this ANPRM. The Coast Guard will publish information regarding costs using the comments received on this ANPRM in a future publication.

Taking of Private Property

We anticipate that any proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

We anticipate that any proposed rule would meet the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We anticipate that any proposed rule will be analyzed under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, and any such rule would not create an environmental risk to health or

risk to safety that might disproportionately affect children.

Indian Tribal Governments

We anticipate that any proposed rule would not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would likely not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, we recognize that ANS may pose significant concerns for some tribal governments and are committed to working with tribes as we proceed with this rulemaking.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how any rule resulting from this ANPRM might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order, and how best to address the ANS concerns of the tribal governments.

Energy Effects

We have not analyzed this ANPRM under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have not determined whether it is a ''significant energy action'' under that order because we do not know whether any resulting rule would be a ''significant regulatory action'' under Executive Order 12866. Once we determine the economic significance of any rule stemming from this ANPRM, we will determine whether a Statement of Energy Effects is required.

Environment

The Coast Guard will consider the environmental impact of any proposed rule that results from this advance notice of proposed rulemaking. We will include either Environmental Assessment or Environmental Impact Statement in the docket for any such rulemaking as appropriate.

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Dated: August 27, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

Editorial Note: This document was received at the Office of the Federal Register on February 28, 2002.

[FR Doc. 02–5187 Filed 2–28–02; 1:36 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH42

Evidence for Accrued Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its

adjudication regulations dealing with accrued benefits, those benefits to which an individual was entitled under existing ratings or decisions, or those based on ''evidence in the file at date of death'' which were due and unpaid at the time the individual died. ''Evidence in the file at date of death'' would be interpreted as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. Further, ''evidence necessary to complete the application'' for accrued benefits would be interpreted as information necessary to establish that the claimant is within the category of eligible persons and that circumstances exist which make the claimant the specific person entitled to the accrued benefits. These amendments would reflect our interpretation of the governing statute.

DATES: Comments must be received by VA on or before May 3, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, Room 1154, 810 Vermont Ave., N.W., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AH42.'' All comments will be made available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., N.W., Washington, DC 20420, (202) 273–7138.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 5121(a) states that periodic monetary benefits under laws administered by the Secretary of Veterans Affairs to which an individual was entitled at death, either under existing ratings or decisions, or based on ''evidence in the file at date of death,'' which are due and unpaid for a period not to exceed two years shall, upon death of that individual, be paid to a properly entitled claimant. This statutory provision lists the persons who are eligible to be paid accrued benefits, in order of preference in the case of a deceased veteran, and specifies the circumstances under which they will be entitled. Section 5121(c) states that the application for accrued benefits must be filed within one year after the date of death, and that if a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application.

In *Hayes v. Brown,* 4 Vet. App. 353, 360 (1993), the Court of Veterans Appeals (now the Court of Appeals for Veterans Claims) stated that ''the regulatory framework that has been established to implement section 5121(a), (c) is confusing at best.'' The Court also found the provisions of VA's Adjudication Procedures Manual (M21–1) at Part IV, Chapter 27, and Part VI, Chapter 5, to be confusing with regard to what post-date-of-death evidence is acceptable, pointing out that to the extent these manual provisions affect what post-date-of-death evidence may be considered, they are substantive rules. The *Hayes* panel also pointed out an apparent statutory ambiguity, noting that while section 5121(a) permits only ''evidence in file at the date of death,'' section 5121(c) seems to contradict, or at least qualify, that provision by stating, ''[i]f a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application.''

We propose to rewrite 38 CFR 3.1000 to remove redundant language and to define both what constitutes ''evidence in the file at the date of death'' for purposes of section 5121(a) and what constitutes ''evidence necessary to complete the application'' for purposes of section 5121(c).

Before granting accrued benefits, VA must determine whether the deceased individual had established entitlement to a periodic monetary benefit that was due and unpaid on the date of death. Also, VA must determine (1) whether the application for accrued benefits provides sufficient information to establish that the claimant falls within the category of persons who may be eligible for accrued benefits, and (2) whether circumstances exist under which that person is entitled to the benefits that have accrued.

38 CFR 3.1000(c)(1) currently states that if a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. We propose to add provisions to § 3.1000(c)(1) to reflect our interpretation of what constitutes ''evidence necessary to complete the application'' under 38 U.S.C. 5121(c). Such evidence would be information establishing that the claimant is within the category of persons eligible for accrued benefits and that circumstances exist which make the claimant the specific person entitled to payment of all or any part of benefits which may have accrued. We believe that the proposed language would make it clear that the ''evidence'' in question is that information necessary to establish that the applicant for accrued benefits is the person eligible for and entitled to those benefits. Further, we believe that the proposed language would ensure that the ''evidence necessary to complete the application'' would not be confused with the ''evidence in the file at date of death'' referred to in 38 U.S.C. 5121(a), which concerns whether an individual was entitled to benefits at the date of his/her death based on ''evidence in the file.'' This will also align the interpretation of this statute with that of 38 U.S.C. 5102, as amended by the Veterans Claims Assistance Act of 2000, Pub. L. 106–475.

38 CFR 3.1000(d)(4) purports to define ''evidence in the file at date of death.'' Rather than defining that statutory term, this regulation currently states that in certain instances VA may accept identifying, corroborating or verifying information from the death certificate and evidence submitted with the claim for accrued benefits to support prima facie evidence already in the file. These current provisions do not define the term ''evidence in the file.''

A claimant who meets all eligibility requirements for a VA benefit is not entitled to that benefit (and there are no payments due) until he or she has filed a specific claim and VA received evidence establishing entitlement. Therefore, there can be no accrued benefits unless the deceased individual had filed a specific claim and VA had received sufficient evidence on or before the date of death to establish entitlement to a VA benefit. *See Jones* v. *West,* 136 F.3d 1296, 1299 (Fed. Cir. 1998) (in the absence of an existing rating or decision, decedent must have had a claim pending at the time of death). Therefore, we propose to define ''evidence in the file at date of death'' according to when the evidence was received, i.e., the evidence must have been in VA's possession on or before the date of death.

We propose to revise § 3.1000(d)(4) to define ''evidence in the file at the date of death'' as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. We believe this definition accurately reflects the meaning of the statutory provisions of section 5121(a). This change would supersede the

current provisions at 38 CFR 3.1000(d)(4).

Accordingly, we propose to delete from M21–1 provisions that are inconsistent with our proposed definition. Those provisions state that certain classes of evidence not in file on the date of death will be considered to provide a basis for an award of accrued benefits and permit an award of accrued benefits to be based on inferences or prospective estimation drawn from information in file on the date of death. Those provisions are in M21–1, part IV, paragraphs 27.08b, c, d, e, and f.

We also propose to delete provisions in M21–1, part VI, paragraph 5.06, that are duplicative of governing statutes, inconsistent with our interpretation of those statutes, or superseded by these proposed regulatory amendments. Such provisions are contained in paragraph 5.06a, which describes general principles applicable to accrued benefits rating decisions.

M21–1, part VI, paragraph 5.06b, in the introductory text, purports to permit the acceptance of a claim for disability pension as an informal claim for disability compensation, and vice versa, only if a claim for accrued benefits is filed within 1 year of the date of receipt of the disability claim. This is inconsistent with 38 CFR 3.151(a), which permits VA to consider a claim for compensation to be a claim for pension and a claim for pension to be a claim for compensation without regard to any accrued benefits claim. Neither § 3.151(a) nor 38 U.S.C. 5101 limits acceptance of such claims only to where a claim for accrued benefits is received. Because the paragraph 5.06b introductory text is inconsistent with the regulations and statute, we propose to delete that introductory text.

M21–1, part VI, paragraph 5.06b(3), concerning payment of accrued benefits for the month of death, is duplicative of the regulations and of governing law. We propose to delete this paragraph as unnecessary.

M21–1, part VI, paragraphs 5.06c and d, are inconsistent with the proposed amendments, and we propose to delete them.

In accordance with the foregoing discussion, we would delete from M21–1, as inconsistent with our interpretation of our statutory authority, duplicative of governing laws, or superseded by these amendments, provisions in Part IV, paragraphs 27.08b, c, d, e, and f, and part VI, paragraphs 5.06a, b introductory text, b(3), c, and d, which relate to rating decisions, claims pending at death, payment for the month of death, consideration of evidence not in VA's possession on the date of the beneficiary's death, the sufficiency of evidence in VA's possession on that date, and inferences or predictions from such evidence.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1000 is amended by revising the section heading, paragraph (c)(1), and paragraph (d)(4) introductory text, to read as follows:

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

* * * * *

(c) * * *

(1) If an application for accrued benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of eligible persons under the provisions of paragraphs (a)(1) through (a)(4) or paragraph (b) of this section and that circumstances exist which make the claimant the specific person entitled to payment of all or part of any benefits which may have accrued, VA shall notify the claimant:

(i) Of the type of information required to complete the application;

(ii) That VA will take no further action on the claim unless VA receives the required information; and

(iii) That if VA does not receive the required information within 1 year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

* * * * *

(d) * * *

(4) *Evidence in the file at date of death* means evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

* * * * *

[FR Doc. 02–5134 Filed 3–1–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 0127–1127; FRL–7151–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Iowa. This revision approves numerous rules adopted by the State in 1998, 1999, and 2001. This includes rules pertaining to

definitions, compliance, permits for new or existing stationary sources, voluntary operating permits, permits by rule, and testing and sampling methods.

These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards, ensure consistency between the State and Federally approved rules, and ensure Federal enforceability of the state's air program rule revisions according to section 110.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 3, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–4937 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 0126–1126; FRL–7151–8]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Iowa Operating Permits Program for air pollution control. This revision approves numerous rules adopted by the state in 1998, 1999, and 2001. This includes rules pertaining to issuing permits, Title V operating permits, voluntary operating permits, and operating permits by rule for small sources. These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revisions.

In the final rules section of the **Federal Register**, EPA is approving the state's operating permits program revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 3, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–4939 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 02–19; FCC 02–30]

Non-geostationary Satellite Orbit, Fixed Satellite Service in the Ka-band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, we initiate a proceeding to determine the means by which multiple satellite network systems will be licensed to operate in spectrum designated on a primary basis for the non-geostationary satellite orbit, fixed-satellite service (''NGSO FSS''), and to determine service rules deferred in previous orders that will apply to Ka-band NGSO FSS applicants. Our goals in this proceeding are similar to those we have pursued for other satellite services: to promote competition through opportunities for new entrants and to provide incentives for prompt commencement of service to the public using state-of-the-art technology. The NGSO FSS applications in the current processing round Second Round Ka-Band (''Second Round'') propose to provide—through a variety of system designs—services such as high-speed Internet and on-line access, as well as other high-speed data, video and telephony services. As a result of the first processing round First Round Ka-Band (''First Round'') there is one NGSO FSS system authorized to provide service in the Ka-band. Thus, implementation of these Second Round NGSO FSS systems will introduce additional means of providing advanced broadband services to the public and will increase satellite and terrestrial services competition.

DATES: Comments are due on or before April 3, 2002; Reply Comments are due on or before April 3, 2002.

ADDRESSES: All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth

Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information concerning this rulemaking proceeding contact: Alyssa Roberts at (202) 418–7276, Internet: *aroberts@fcc.gov,* or Robert Nelson at (202) 418–2341, Internet: *rnelson@fcc.gov,* International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: We propose to license all five of the Second Round Ka-band applicants seeking access to the spectrum designated on a primary basis to NGSO FSS systems, specifically the 18.8–19.30 GHz and 28.60–29.10 GHz frequency bands. Our preference is to have an outcome dictated by the service market rather than by regulatory decision. We seek comment on the best means to accommodate all of the applicants within the available spectrum, bearing in mind the Commission's previous authorization to Teledesic to operate domestically in the 500 megahertz of paired spectrum designated for primary NGSO FSS services. We propose four possible options for spectrum sharing as a starting point for comment. These proposed options are based on features of the pending applications, a proposal received from one of the applicants, and upon sharing mechanisms we have previously employed with other satellite services.

In adopting this Notice of Proposed Rulemaking (NPRM), we intend to allow expeditious deployment of NGSO FSS in the United States for the benefit of consumers by establishing a spectrum sharing plan and service rules so that systems can be implemented in compliance with International Telecommunication Union (ITU) deadlines, and by allowing market forces to play a role in the implementation of these systems. We believe it is in the public interest to provide opportunities for multiple systems to compete, providing more service choices and competitive prices in the marketplace. Our expectation is that NGSO FSS providers will provide a vigorous, additional source of broadband service for consumers, in competition with existing satellite and terrestrial services. This NPRM puts forth several options for assigning shared NGSO FSS spectrum resources, including incentives for rapid implementation of service. We believe that the proposals in this NPRM are sufficiently flexible to accommodate the NGSO FSS systems set forth by the pending applicants. We seek comment on these and other possible sharing proposals. Finally, we request any other suggestions commenters might set forth with respect to sharing or service rules for NGSO FSS systems.

We also request comment on additional service rules for NGSO FSS licensees. We start with our existing satellite service rules for Ka-band FSS systems adopted in the Third Report and Order.[1] While that order resolved service rules and licensing qualifications for First Round applicants, the Commission deferred consideration of certain requirements for future NGSO FSS systems to a later processing round.

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA),[2] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [3] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

This Notice of Proposed Rulemaking (NPRM) seeks comment on proposed options for spectrum sharing among the second round Ka-Band non-geostationary satellite orbit fixed-satellite service (NGSO FSS) applicants. The Commission proposes to license all five of the applicants and seeks comment on which option may best accommodate the applicants. Implementation of these NGSO FSS systems will introduce additional means of providing broadband services to consumers as quickly as possible. This NPRM also seeks comment on our proposals for service rules to apply to NGSO FSS systems.[7] These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the NGSO FSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest and enables the U.S. to preserve its ITU international coordination priority. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public. If commenters believe that the proposed rules discussed in the Notice require additional RFA analysis, they should include a discussion of this in their comments.

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary satellite orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services ''Not Elsewhere Classified.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts.[8] This Census Bureau category is very broad, and commercial satellite services constitute only a subset of the total number of entities included in the category.

The rules proposed in this document apply only to entities providing NGSO FSS. Small businesses will not likely have the financial ability to become

[1] Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Services and for Fixed Satellite Services, Third Report and Order, 62 FR 61448 November 18, 1997, 12 FCC Rcd 22310 (1997) (''Third Report and Order''). In May 2001, the Commission issued a Memorandum Opinion and Order disposing of petitions for clarification or reconsideration of the Third Report and Order filed by Motorola Global Communications, Inc. and Hughes Communications Galaxy, Inc. In this order, the Commission noted that a petition for reconsideration or clarification of the Third Report and Order filed by Teledesic would be addressed in notice and comment proceedings pertaining to a second licensing round for Ka-band satellite systems. 16 FCC Rcd 11464 (2001) Section 18.

[2] The RFA, 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[3] 5 U.S.C 605(b).

[4] Id. at 601(6).

[5] Id. at 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] Small Business Act, 15 U.S.C. 632.

[7] See paragraphs 37–44, supra.

[8] 13 CFR 121.201, North American Industry Classification System (NAICS) Code 51334.

NGSO FSS system operators because of the high implementation costs associated with satellite systems and services. Since there is limited spectrum and orbital resources available for assignment, we estimate that only five applicant entities, whose applications are pending, will be authorized by the Commission to provide these services. We expect that none of these would be considered small businesses under the SBA definition. Thus, the rules proposed in this Notice of Proposed Rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**. See 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to sections 4(1), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r), this Notice of Proposed Rulemaking is hereby ADOPTED.

Service Rules. Because our *Third Report and Order* focused on First Round GSO and NGSO systems, we deferred consideration of several NGSO FSS rules to a later processing round. We now seek comment on the following licensing and service rules in light of the decisions made in prior orders, our goal of ensuring expedited licensing, and considering the NGSO FSS spectrum sharing proposals presented in this *Notice.*

Financial qualifications. As noted above, the Commission waived the financial qualification requirement for the First Round Ka-band applicants, but deferred consideration of the applicability of this rule to Second Round applicants to a later processing round. Historically, the Commission has fashioned financial requirements for satellite services on the basis of entry opportunities in the particular service being licensed.[9] In cases where it can accommodate all pending applications and future entry is possible, the Commission has not looked to current financial ability as a prerequisite to a license grant. But in situations where potential applicants appear to have requirements that exceed the available spectrum or orbital resources, the Commission has invoked a strict financial qualifications standard. This policy is designed to make efficient use of spectrum by preventing underfinanced applicants from depriving another fully capitalized applicant of the opportunity to provide service to the public. Since this *NPRM* proceeds from the assumption that a spectrum sharing plan can be devised to accommodate all the pending applicants' proposed systems and future entry, we are not proposing a strict financial qualification standard for this service with respect to the Second Round NGSO FSS applicants. If, however, the record developed in this proceeding indicates that the allocated spectrum cannot accommodate all applicants, we may impose a strict financial qualifications standard.

Should we determine the need to impose strict financial qualifications, we seek comment on whether to modify our existing financial qualifications requirement. Presently, NGSO FSS applicants are required to demonstrate internal assets or committed financing sufficient to cover construction, launch, and first-year operating costs of its entire system. We propose to require the commitment of funds not previously committed for any other purpose. If strict financial qualifications are invoked, applicants for NGSO FSS licenses will be required to demonstrate that they have assets or committed financing for their NGSO FSS systems that are separate and apart from any funding necessary to construct and operate any other licensed satellite systems. We request comment on this proposal, and ask whether there are alternative means of oversight we can employ to ensure that licensees will be able to commence timely service to the public.

Implementation milestones. As with all other satellite services, we propose that all NGSO FSS Ka-band licensees adhere to a strict timetable for system implementation. Milestones are intended to ensure that licensees are building their systems in a timely manner and that the spectrum resources are not being held by licensees unable or unwilling to proceed with their plans to the detriment of other operators who might benefit the public interest by implementing satellite systems. We propose implementation milestones that track schedules recently imposed on other NGSO systems.[10] Specifically, we propose that NGSO FSS Ka-band licensees must enter into a non-contingent satellite manufacturing contract for the system within one year of authorization, complete critical design review within two years of authorization, begin physical construction of all satellites in the system within two and half years of authorization, and complete construction and launch of the first two satellites within three and a half years of grant. The entire system will have to be launched and operational within six years of authorization. As is consistent with our practice in other services, we propose to require operators to submit certifications of milestone compliance, or file a disclosure of non-compliance, within 10 days following a milestone specified in the system authorization.

Alternatively, we propose to modify the implementation milestones for NGSO FSS licensees by tying the milestones to the ITU bring into use date.[11] For example, we could require applicants to demonstrate that they are on a launch manifest at a designated point some months before the ITU bringing into use date. In addition, we could require licensees to also meet the intermediate milestones noted above, that is, enter into a non-contingent contract, complete critical design review and begin physical construction of all satellites within a specified time frame prior to the ITU bringing into use date. We seek comment on what time frames would be appropriate. We seek comment on these or other possible approaches to implementation milestones.[12]

Reporting requirements. We propose a slight modification to § 25.145 of our rules, which governs reporting requirements for FSS systems. FSS licensees are required to file an annual report with the Commission describing: the status of satellite construction and anticipated launch dates, including any major delays or problems encountered; and a detailed description of the use made of each satellite in orbit.[13] Licensees should request an extension of time if they anticipate delays in these schedules. We propose to apply these requirements to NGSO FSS systems. We do not, however, propose to apply a requirement to report unscheduled satellite outages.[14] The outage reporting requirement was a means of spectrum management instituted to ensure that

[9] 47 CFR 25.140(c), 25.142(a)(4), and 25.143(b)(3).

[10] The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, Report and Order, 15 FCC Rcd 16127 (2000) (''2 GHz Report and Order'').

[11] The ITU deadline for putting these U.S. systems into use is May 18, 2003. A two-year extension may be granted under certain circumstances, thus the latest date to bring into use at least one satellite by each of the second round applicants is May 18, 2005.

[12] We plan to undertake an investigation of milestones issues in a separate, broader proceeding, not limited to NGSO FSS service.

[13] 47 CFR 25.210(l)(1) and (3).

[14] 47 CFR 25.210(l)(2).

satellite spectrum resources were not warehoused in orbit. We believe that the operational characteristics of NGSO systems obviate the need for this reporting requirement. One of the second round applicants, @Contact, suggests that applicants be required to file quarterly reporting requirements to enable the Commission to monitor more closely milestone compliance. We request comment on these proposals. We also seek comment on a proposal to require NGSO FSS operators to file affidavits certifying whether milestone requirements are met following the appropriate milestone deadlines.[15] The Commission would retain the right to request additional information (*e.g.*, copies of construction contracts), as required to ensure compliance with milestones. Failure to file a timely certification or disclosure of non-compliance would result in automatic cancellation of an operator's system authorization, with no further action required on the Commission's part.[16] We seek comment on this proposal.

Orbital Debris Mitigation. Currently, the FCC addresses concerns regarding orbital debris of satellite systems on a case-by-case basis. The Commission analyzes such concerns under the general ''public interest, convenience, and necessity,'' standard in the Communications Act. In our 2 GHz Report and Order,[17] we adopted a requirement that applicants for 2 GHz MSS authorizations disclose their orbital debris mitigation plans. Like the Ku-band Notice of Proposed Rulemaking[18] we propose to apply that requirement to NGSO FSS applicants as well, and seek comment on its application to this service. We also intend to commence a separate rulemaking proceeding to consider whether to adopt filing requirements for all FCC-licensed satellite services, including orbital debris mitigation issues, the selection of safe flight profiles and operational configurations, as well as post-mission disposal practices.

System License and License Terms. NGSO systems historically consist of constellations of technically identical satellites that may be launched and retired at different times. Consequently, existing NGSO satellites in other bands and services have been authorized under blanket licenses.[19] Under this approach, licensees are issued a single blanket authorization for the construction, launch and operation of a specified number of technically identical space stations that constitute the satellite network constellation. The authorization covers all construction and launches necessary to implement the complete constellation and to maintain it until the end of the license term, including any replacement satellites necessitated by launch or operational failure, or by retirement of satellites prior to the end of the license period. All replacement satellites, however, must be technically identical to those in service, including the same orbital parameters, and may not cause a net increase in the number of operating satellites. The license terms runs from the date on which the first space station in the system begins transmitting and receiving radio signals, and is valid for 10 years from that point in time. There is a filing window for system replacement applications prior to the expiration of the license that allows sufficient time for the Commission to act upon replacement system applications. We believe it is appropriate to continue using this model of licensing for the NGSO FSS. We propose to require that replacement applications be filed no earlier than three months prior to, and no later than one month after, the end of the eighth year of the existing system license. We request comment on this proposal.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, IB Docket No. 02–19, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or <*bmillin@fcc.gov*>. This NPRM can also be downloaded in Microsoft Word and ASCII formats at <*http://www.fcc.gov/ib*>.

This Notice of Proposed Rulemaking (Notice) seeks comment on proposed options for spectrum sharing among the second round Ka-Band non-geostationary satellite orbit fixed-satellite service (NGSO FSS) applicants. The Commission proposes to license all five of the applicants and seeks comment on which option may best accommodate the applicants. Implementation of these NGSO FSS systems will introduce additional means of providing broadband services to consumers as quickly as possible. This document also seeks comment on our proposals for service rules to apply to NGSO FSS systems.[20] These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the NGSO FSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest and enables the U.S. to preserve its ITU international coordination priority. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to

[15] This requirement currently applies to Big LEO and 2 GHz operators.

[16] *See* 47 CFR 25.161.

[17] *2 GHz Report and Order*, 65 FR 54555, 15 FCC Rcd at 16187–88, Section 135–138.

[18] *Ku-Band NPRM,* Section 66–67.

[19] *See, e.g.*, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to Mobile Satellite Service in the 1610–1626/2483.5–2500 MHz Frequency Bands, *Report and Order*, 66 FR 30361, 9 FCC Rcd 536 (1994).

[20] *See* paragraphs 37–44, supra.

existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public. If commenters believe that the proposed rules discussed in the NPRM require additional RFA analysis, they should include a discussion of this in their comments.

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary satellite orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services ''Not Elsewhere Classified.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts.[21] This Census Bureau category is very broad, and commercial satellite services constitute only a subset of the total number of entities included in the category.

The rules proposed in this Notice apply only to entities providing NGSO FSS. Small businesses will not likely have the financial ability to become NGSO FSS system operators because of the high implementation costs associated with satellite systems and services. Since there is limited spectrum and orbital resources available for assignment, we estimate that only five applicant entities, whose applications are pending, will be authorized by the Commission to provide these services. We expect that none of these would be considered small businesses under the SBA definition. Thus, the rules proposed in this Notice of Proposed Rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**. See 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

[21] 13 C.F.R. 121.201, North American Industry Classification System (NAICS) Code 51334.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sec. 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.145 is amended by removing ''and'' at the end of paragraph (c)(1), by removing the period at the end of paragraph (c)(2) and adding ''; and'' in its place, by removing ''and'' at the end of paragraph (g)(1)(ii), by removing the period at the end of paragraph (g)(1)(iii) and adding ''; and'' in its place, adding paragraphs (c)(3), (g)(1)(iv), (i), (j) and (k) and revising paragraph (f) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(c) * * *

(3) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

* * * * *

(f) *Implementation milestone schedule.* Each NGSO FSS licensee in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands will be required to enter into a non-contingent satellite manufacturing contract for the system within one year or authorization, to complete critical design review within two years of authorization, to begin physical construction of the satellites in the system within two and a half years of grant, and to launch and operate its entire authorized system within six years of authorization.

(g) * * *

(1) * * *

(iv) All operators of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz bands shall, within 10 days after a required implementation milestone as specified in the system authorization, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. Failure to file a timely certification of milestones, or filing disclosure of non-compliance, will result in automatic cancellation of the authorization with no further action required on the Commission's part.

* * * * *

(i) *Financial requirements.* Each NGSO FSS applicant must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to meet the estimated costs of the construction and/or launch and any other initial expenses of all proposed space stations in its system and the estimated operating expenses for one year after the launch of the proposed space station(s). Financial qualifications must be demonstrated in the form specified in §§ 25.140(c) and 25.140(d). In addition, applicants relying on current assets or operating income must submit evidence that those assets are separate and apart from any funding necessary to construct or operate any other licensed satellite system. Failure to make such a showing will result in the dismissal of the application.

(j) *Replacement of space stations within the system license term.* Licensees of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands authorized through a blanket license pursuant to paragraph (b) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization; and

(2) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(k) *In-orbit spares.* Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (b) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

[FR Doc. 02–5081 Filed 2–27–02; 4:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–424, MM Docket No. 00–133, RM–9895]

Digital Television Broadcast Service; Portland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments request filed by HMW, Inc, requesting the substitution of DTV 43 for DTV channel 4 at Portland, Maine. DTV Channel 43 can be allotted to Portland, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43–51–06 N. and 70–19–40 W. As requested, we propose to allot DTV Channel 43 to Portland with a power of 750 and a height above average terrain (HAAT) of 265 meters. However, since the community of Portland is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before April 22, 2002, and reply comments on or before May 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Brendan Holland, Shaw Pittman, LLP, 2300 N Street, NW., Washington, DC 20037–1128 (Counsel for HMW, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 00–133, adopted February 25, 2002, and released March 1, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Maine is amended by removing DTV Channel 4 and adding DTV Channel 43 at Portland.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–4980 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 022502A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2–day Council meeting on March 19 and 20, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday and Wednesday, March 19 and 20, 2002. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday.

ADDRESSES: The meeting will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone (860) 572–0731. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 19, 2002

Following introductions, the Council will consider fishing effort capacity reduction proposals for inclusion in draft Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). The Council will consider proposals for modifying permit transfer provisions, reducing latent effort (unused groundfish days-at-sea) and the consolidation of fishing effort. Following this report, the Council will provide time on the agenda for public comments on any issues that are relevant to fisheries management and Council business. The Groundfish Committee will discuss progress on the development of Amendment 13. They will also recommend and possibly approve changes to the groundfish status determination criteria for inclusion in Amendment 13.

Wednesday, March 20, 2002

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A discussion of implementation issues concerning the U.S./ Canada Shared Resources Agreement is then scheduled, followed by a vote on whether to adopt the agreement, the contents of which were presented at the January Council meeting. There will be a discussion of possible future action related to the annual evaluation of whiting management measures. The Council will discuss whether it will complete a

Framework Adjustment to implement alternatives to the year 4 default measures for whiting scheduled to become effective on May 1, 2003. During the Monkfish Committee Report the Council will consider approval of goals and objectives for Amendment 2 to the Monkfish FMP for the purpose of providing a basis for the development of management measures. There also will be an update on a timetable for the amendment and progress to develop management alternatives. The Scallop Committee will provide an overview of alternatives under consideration for inclusion into Draft Amendment 10 to the Atlantic Sea Scallop FMP.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 26, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 02–5099 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 42
Monday, March 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A30, AO–380–A18; DA–01–08]

Milk in the Pacific Northwest and Western Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124	Pacific Northwest.	AO–368–A30
1135	Western	AO–380–A18

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk orders. Proposals pertaining to the Pacific Northwest order include redefining the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards and eliminating the ability of handlers to pool the same milk under more than one marketwide pool. Proposals to amend the Western order would provide for net shipments for pool supply plant qualification, increase the cooperative pool plant delivery performance standard, eliminate the proprietary bulk tank unit provision, reduce the diversion allowance for producer milk and calculate diversions on a net basis, and establish transportation and assembly credit provisions. Other proposed amendments to the Western order would redefine the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards, eliminate the ability of handlers to pool the same milk under more than one marketwide pool, and clarify the proprietary bulk tank handler, producer, and producer milk definitions. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Tuesday April 2, 2002.

ADDRESSES: The hearing will be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax).

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250–0231, (202)690–1366, e-mail address: Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Joanne Walter at email *jwalter@fmmaseattle.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax), beginning at 8:30 a.m., on Tuesday, April 2, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000 or produces less than 500,000 pounds of milk per month, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has

jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with three copies of such exhibits for the Official Record.Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR Parts 1124 and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department of Agriculture.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Proposals No. 1 and 2 Pertain only to the Pacific Northwest Order.

Proposed by: Northwest Dairy Association

Proposal No. 1

Amend the Producer definition in ''1124.12 to prevent the pooling of the same milk under the Pacific Northwest Federal order and a State marketwide order at the same time by adding a new paragraph (b)(6) to read as follows:

§ 1124.12 Producer.

* * * * *

(b) * * *

(6) A dairy farmer whose milk is pooled on a state order with a marketwide pool.

Proposed by Dairy Farmers of America

Proposal No. 2

Amend the pool supply plant and producer milk definitions to require that milk from ''distant'' locations be reported by individual state units, each of which would be subject to the performance standards applicable to supply plants and producer milk by adding a new paragraph (c)(5) in § 1124.7 and redesignating '' 1124.13 paragraph (e)(5) as (e)(6) and adding a new paragraph (e)(5) to read as follows:

§ 1124.7 Pool Plant.

* * * * *

(c) * * *

(5) If milk is delivered to a plant physically located outside the State of Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) At least the required minimum percentage and delivery requirements specified in § 1124.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1124.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.7(c)(1); and

(iii) The percentages of § 1124.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1124.7(g).

* * * * *

§ 1124.13 Producer Milk.

* * * * *

(e) * * *

(5) Milk receipts from producers whose farms that are physically located outside the State of Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1124.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.13(c); and

(iii) The percentages of § 1124.13(e)(5) are subject to any adjustments that may be made pursuant to § 1124.13(e)(6).

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

Proposals 3 through 16 pertain only to the Western Order.

Proposals 3 Through 9 Proposed by Dairy Farmers of America

Proposal No. 3

Establish a ''net shipment'' provision applicable to deliveries to pool distributing plants as well as pool supply plants by adding a new paragraph (c)(5) in '' 1135.7 to read as follows:

§ 1135.7 Pool plant.

* * * * *

(c) * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by distributing pool plants, less any transfers of bulk fluid milk products from such distributing pool plants.

* * * * *

Proposal No. 4

Increase the cooperative pool plant provision delivery performance standard from 35% to 50% by revising '' 1135.7 paragraph (d) to read as follows:

§ 1135.7 Pool plant.

* * * * *

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 50 percent or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph, subject to the following conditions:

* * * * *

Proposal No. 5

Eliminate the bulk tank handler provision in the Western order by removing '' 1135.11.

Proposal No. 6

Reduce the amount of producer milk eligible for diversion to nonpool plants from 90 percent to 70 percent by revising '' 1135.13 paragraph (d)(2) to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 70 percent;

* * * * *

Proposal No. 7

Amend diversion percentages in '' 1135.13 be calculated on a net basis and to be applicable to both pool supply plants and nonpool plants, by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), and adding a new paragraph (d)(3) to '' 1135.13 to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(3) Receipts used in determining qualifying percentages shall be milk transferred to, diverted to, or delivered from farms of producers pursuant to § 1000.9(c) and physically received by plants described in § 1135.7(a) or (b), less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

Proposal No. 8

Establish a partially offset intra-order transportation credit provision that will allow shipments traveling distances in excess of a number of miles representing a ''typical'' base hauling distance for the area to receive credit from the marketwide pool for supplying the Class I needs of the market. Credit would be limited to producers physically located within the marketing area. Payment would be made to the milk supplier. An assembly credit would be applied to milk delivered to distributing plants. The reporting requirements of the order, in §§ 1135.30 and 1135.32, would be amended to accommodate the transportation and assembly credit provisions. This would be accomplished by adding new paragraphs (a)(5) and (c)(3) in § 1135.30, redesignating the introductory text in § 1135.32 as paragraph (a) and republishing it and adding a paragraph (b) and adding a new § 1135.55 to read as follows:

§ 1135.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(5) Receipts of producer milk described in § 1135.55 (d), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1135.55, all of the information required in paragraph (a)(5) of this section.

§ 1135.32 Other Reports.

(a) In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

(b) On or before the 21st day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1135.30(a)(5).

§ 1135.55 Transportation credits and assembly credits.

(a) Payments for the transportation of and assembly of milk supplies for pool distributing plants to cooperative associations and handlers that request them shall be made as follows:

(1) On or before the 14th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received and reported pursuant to § 1135.30(a)(5) milk directly from producers' farms, a preliminary amount determined pursuant to paragraph (b) and/or (c) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 21st day of the month following the month for which such credits were requested pursuant to § 1135.32(a). After such date, a preliminary audit will be conducted by the market administrator. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments will remain subject to the final computation established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1135.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives bulk milk directly from farms of producers described in § 1135.12 that are located within the marketing area, shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (d) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .38 cents times the number of miles between the receiving plant and the farm less 80 miles;

(3) Subtract from the effective Class I price at the receiving plant the effective Class I price of the county that the farm is located in;

(4) Multiply any positive amount resulting from the subtraction in paragraph (b)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (b)(4) of this section from the amount computed in paragraph (b)(2) of this section. If the amount computed in paragraph (b)(4) of this section exceeds the amount computed in paragraph (b)(2) of this section, the transportation credit shall be zero.

(c) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (d) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 5 cents.

(d) The following procedure shall be used to determine the amount of milk

eligible for transportation and assembly credits pursuant to paragraphs (b) and (c) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk other source milk received at the pool distributing plant that is assigned to Class I pursuant to § 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to bulk physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c);

(iii) Handlers described in § 1135.11; and

(iv) Other pool plants.

(e) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

(f) In the case of a direct ship farm load the distance shall be measured from the farm on the route that results in the fewest miles. It shall be the responsibility of the reporting handler to designate such farm and for the purpose of computing mileages, the city closest to that farm.

Proposal No. 9

Amend §§ 1135.7 and 1135.13 to establish state unit standards for milk from ''distant'' supply locations. Add a new paragraph (c)(3) to the pool supply plant definition in § 1135.7, redesignate § 1135.13 paragraph (d)(6) as paragraph (d)(7) and add a new paragraph (d)(6) to the producer milk definition to read as follows:

§ 1135.7 Pool plant.

* * * * *

(c) * * *

(3) If milk is delivered to a plant physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) At least the required minimum percentage and delivery requirements specified in section § 1135.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1135.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1135.7(c); and

(iii) The percentages of § 1135.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1135.7(g).

* * * * *

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(6) Milk receipts from producers whose farms that are physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1135.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1135.13(c); and

(iii) The percentages of § 1135.13(d)(6) are subject to any adjustments that may be made pursuant to § 1135.13(d)(7).

* * * * *

Submitted by Northwest Dairy Association

Proposal No. 10

Prevent producers who share in the proceeds of a state marketwide pool from simultaneously sharing in the proceeds of a federal marketwide pool on the same milk in the same month by amending the Producer provision in § 1135.12 by adding a new paragraph (b)(6) to read as follows:

§ 1135.12 Producer.

* * * * *

(b) * * *

(6) A dairy farmer whose milk is pooled on a state order with a market widepool.

Proposals 11 through 13, submitted by Meadow Gold Dairies, are to be considered as alternatives.

Assure that Class I handlers make uniform payments for their raw milk purchases by amending the proprietary bulk tank handler provision or by amending the provision regarding payments to producers and to cooperative associations.

Proposal No. 11

Amend § 1135.11 by adding paragraph (c) to read as follows:

§ 1135.11 Proprietary bulk tank handler.

* * * * *

(c) Milk defined as producer milk pursuant to § 1135.13(a) shall be reported and considered as producer milk at the pool plant where received.

Proposal No. 12

Amend § 1135.73 by revising paragraphs (b), introductory text, and (b)(1) and adding a new paragraph (b)(5) to read as follows:

§ 1135.73 Payments to producers and cooperative associations.

* * * * *

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association or a proprietary bulk tank handler for milk received as follows:

(1) *Partial payment to a cooperative association or a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of a cooperative

association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, and for bulk milk received directly from producers' farms and delivered during the first 15 days of the month for the account of proprietary bulk tank handler pursuant to § 1135.11, the payment to the cooperative association or proprietary bulk tank handler shall be an amount not less than 1.2 times the lowest class price for the proceeding month multiplied by the hundredweight of milk.

* * * * *

(5) *Final payment to a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For the total quantity of bulk milk received directly from producers' farms and delivered during the month for the account of a proprietary bulk tank handler pursuant to § 1135.11, the final payment to the proprietary bulk tank handler for such milk shall be at not less than the total value of such milk as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (b)(5)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

* * * * *

Proposal No. 13

Amend § 1135.73 by revising paragraph (a) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer, including each producer from whom milk moved direct from the farm in a truck under the control of a handler defined under § 1135.11, from whom milk is received during the month as follows:

* * * * *

Proposals 14—16 submitted by the Market Administrator.

Proposal No. 14

Clarify the Proprietary bulk tank handler definition by revising the introductory text of § 1135.11 to read as follows:

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to a pool plant described in § 1135.7(a) or § 1135.7(b) of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

* * * * *

Proposal No. 15

Clarify the Producer definition by revising § 1135.12 paragraph (b)(5) to read as follows:

§ 1135.12 Producer.

* * * * *

(b) * * *

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any class other than Class II, Class III, or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as *a dairy farmer for other markets.*

Proposal No. 16

Clarify the Producer milk definition by revising § 1135.13 paragraph (d)(1) to read as follows:

§ 1135.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless one day's milk production has been physically received as producer milk at a pool plant during the month;

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service.

Proposal No. 17

For both the Pacific Northwest and the Western orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there. Copies may also be obtained at the USDA–AMS website at http://www.ams.usda.gov/dairy/

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Market Administrator of the Pacific Northwest and Western Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time

Dated: February 26, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–5073 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–70–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposed AD would require you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at each elevator tip rib for corrosion; and either remove the corrosion or replace a corroded elevator tip rib depending on the corrosion damage. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this proposed AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 29, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 97–CE–70–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports incidents of corrosion found in the area of the elevator tip rib underneath the mass balance weights on several of the above-referenced airplanes.

What Are the Consequences if the Condition Is Not Corrected?

These conditions, if not detected and corrected, could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

Is There Service Information That Applies to This Subject?

De Havilland has issued Beaver Service Bulletin Number 2/50, dated May 9, 1997 (applicable to Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); and Beaver Service Bulletin Number TB/58, dated May 9, 1997 (applicable to Model DHC–2 Mk. III airplanes).

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—modifying the elevator tip rib on each elevator;

—repetitively inspecting underneath the mass balance weights at the elevator tip rib for corrosion; and

—either removing the corrosion or replacing the corroded elevator tip rib depending on the corrosion damage.

What Action Did Transport Canada Take?

Transport Canada classified these service bulletins as mandatory and issued AD No. CF–97–06, dated May 28, 1997, in order to ensure the continued airworthiness of these airplanes in Canada.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, Transport Canada has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of Transport Canada; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service

information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at the elevator rib tip for corrosion; and either remove the corrosion or replace the corroded elevator tip rib depending on the corrosion damage.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 160 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
13 workhours × $60 = $780	No parts cost required	$780	$780 × 160 = $124,800.

These figures only take into account the proposed modification and initial inspection costs and do not take into account the costs of any of the proposed repetitive inspections or the cost to replace any elevator tip rib that would be found corroded past a certain extent. We have no way of determining the number of repetitive inspections each owner/operator would incur over the life of each affected airplane or the number of elevator tip ribs that would need to be replaced.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 6 calendar months after the effective date of this AD''.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

We have determined that a calendar time compliance is the most desirable method because the unsafe condition described in this proposed AD is caused by corrosion. Corrosion develops regardless of whether the airplane is in service and is not a result of airplane operation. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

De Havilland Inc.: Docket No. 97–CE–70–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes: cut an access hole and install an access cover and ring doubler on the elevator tip rib of each elevator.	Within the next 6 calendar months after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver fabricate and Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(2) For all affected airplanes: inspect underneath the mass balance weights at each elevator tip rib for corrosion.	Within the next 6 calendar months after the effective date of this AD and thereafter at intervals not to exceed 5 years.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(3) For all affected airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is equal to or less than 0.004 inches depth, remove the corrosion.	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(4) For all affected airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth, accomplish one of the following:	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(i) use the procedures in the service bulletin to manufacture a new tip rib, part number 2DKC2–TE–77, and replace the affected tip rib with this new tip rib; or.	.....	
(ii) replace any affected elevator tip rib with a part number (P/N) C2–TE–103AND elevator tip rib. You may obtain a P/N C2–TE–103AND elevator tip rib. You may obtain a P/N C2–TE–103AND elevator tip rib from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	.....	
(5) In addition to the above for the affected DHC–2 MK III airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth on the channel, accomplish one of the following:	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997.
(i) use the procedures in the service bulletin to manufacture a new channel replacement, part number 2DKC2TE1020–13, and replace the affected channel with new channel; or.	.....	
(ii) replace the channel with a part number (P/N) C2–TE–89ND channel. You may obtain a P/N C2–TE–89ND channel from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	.....	

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, New York Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Canadian AD No. CF–97–06, dated May 28, 1997.

Issued in Kansas City, Missouri, on February 21, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5004 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Regulatory Review; Notice of Intent To Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission (''Commission'') rules and guides, the Commission gives notice that it intends to request public comments on the rule and guides listed below during 2002. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rule and guides; possible conflict between the rule and guides and state, local, or other federal laws or regulations; and the effect on the rule and guides of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rule and guides should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for the particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rule and guides during 2002:

(1) *Guides Concerning Use of Endorsements and Testimonials in Advertising,* 16 CFR 255. Agency Contact: Richard Cleland, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3088.

(2) *Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles,* 16 CFR 309. Agency Contact: Neil Blickman, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3038.

As part of its ongoing program to review all current Commission rules and guides, the Commission also has tentatively scheduled reviews of other rules and guides for 2003 through 2011. A copy of this tentative schedule is appended. The Commission may in its discretion modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE

16 CFR Part	Topic	Year to review
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2002
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2002
228	Tire Advertising and Labeling Guides	2003
304	Rules and Regulations under the Hobby Protection Act	2003
600	Statements of General Policy or Interpretations Under the Fair Credit Reporting Act	2003
18	Guides for the Nursery Industry	2004
410	TV Picture Tube Size Rule	2004
424	Retail Food Store Advertising and Marketing Practices Rule	2004
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2005
311	Recycled Oil Rule	2005
312	Children's Online Privacy Protection Rule	2005
444	Credit Practices Rule	2005
455	Used Car Rule	2005
24	Guides for Select Leather and Imitation Leather Products	2006
435	Mail or Telephone Order Merchandise Rule	2006
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act (''FPLA'')	2006
501	Exemptions from Part 500 of the FPLA	2006
502	Regulations Under Section 5(c) of the FPLA	2006
503	Statements of General Policy or Interpretations Under the FPLA	2006
305	Appliance Labeling Rule	2007
306	Automotive Fuel Ratings, Certification and Posting Rule	2007
429	Cooling Off Rule	2007
601	Summary of Consumer Rights, Notice of User Responsibilities, and Notice of Furnisher Responsibilities under the Fair Credit Reporting Act.	2007
254	Guides for Private Vocational and Distance Education Schools	2008
260	Guides for the use of Environmental Marketing Claims	2008
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2008
301	Rules and Regulations under the Fur Products Labeling Act	2008
303	Rules and Regulations under the Textile Fiber Products Identification Act	2008
425	Rule Concerning the Use of Negative Option Plans	2008

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE—Continued

16 CFR Part	Topic	Year to review
239	Guides for the Advertising of Warranties and Guarantees	2009
433	Preservation of Consumers' Claims and Defenses Rule	2009
700	Interpretations of Magnuson-Moss Warranty Act	2009
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2009
702	Pre-sale Availability of Written Warranty Terms	2009
703	Informal Dispute Settlement Procedures	2009
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2010
423	Care Labeling Rule	2010
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2011
233	Guides Against Deceptive Pricing	2011
238	Guides Against Bait Advertising	2011
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2011
251	Guide Concerning Use of the Word ''Free'' and Similar Representations	2011
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2011

[FR Doc. 02–5124 Filed 3–1–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to the advance notice of proposed rulemaking that was published in the **Federal Register** on Thursday, January 24, 2002 (67 FR 3461) that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits.

DATES: This correction is effective January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew J. Keyso, (202) 927–9397 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking that is the subject of this correction is under section 263(a) of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking (REG–125638–01) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the advance notice of proposed rulemaking (REG–125638–01), which is the subject of FR Doc. 02–1678 is corrected as follows:

On page 3464, column 1, line 7, the language *''J.J. Case Company* v. *United States, 32''* is corrected to read *''J.I. Case Company* v. *United States, 32.''*

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–5111 Filed 3–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–251502–96]

RIN 1545–AU68

Civil Cause of Action for Certain Unauthorized Collection Actions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to Internal Revenue Code section 7433 that was published in the **Federal Register** on Wednesday, December 31, 1997. The proposed regulations implemented provisions of the Taxpayer Bill of Rights 2 (TBOR2). TBOR2 raised the cap on damages under section 7433 and eliminated the jurisdictional prerequisite requiring a taxpayer to exhaust administrative remedies before filing a civil damage action.

FOR FURTHER INFORMATION CONTACT: Kevin Connelly, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, December 31, 1997, the IRS issued proposed regulations titled Civil Cause of Action for Certain Unauthorized Collection Actions (62 FR 68242). Because the Internal Revenue Service Restructuring and Reform Act of 1998 substantially amended section 7433, including sections that TBOR2 had previously amended, we are withdrawing these proposed regulations (REG–251502–96). A new notice of proposed rulemaking containing both the statutory provisions of TBOR2 and RRA1998 with respect to damage actions under section 7433, as well as section 7426, has been opened.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, December 31, 1997 (62 FR 68242) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5112 Filed 3–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule; public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule on conditions for appropriate use and audit policy for transactions for prototype projects published in the **Federal Register** at 66 FR 58422 on November 21, 2001.

DATES: The meeting will be held on March 27, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the National Contract Management Association (NCMA), which is located at 1912 Woodford Road, Vienna, Virginia 22182. Directions to NCMA are available at *http://www.acq.osd.mil/dp/dsps/ot/pr.htm*.

FOR FURTHER INFORMATION CONTACT: David Capitano, Office of Cost, Pricing, and Finance, by telephone at 703–602–4245, by FAX at 703–602–0350, or by e-mail at *david.capitano@osd.mil*.

SUPPLEMENTARY INFORMATION: The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues pertaining to the proposed rule on Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects published in the **Federal Register** at 66 FR 58422 on November 21, 2001. A listing of some of the possible issues for discussion, as well as copies of the written public comments submitted in response to the November 21, 2001 proposed rule, are available at *http://www.acq.osd.mil/dp/dsps/ot/pr.htm*.

Dated: February 27, 2002.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–5157 Filed 2–28–02; 11:52 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2001–10486]

RIN 2115–AG21

Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard seeks comments on the development of a ballast water treatment goal, and an interim ballast water treatment standard. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996 require the Coast Guard to regulate ballast water management practices to prevent the discharge of shipborne ballast water from releasing harmful nonindigenous species into U.S. waters of the Great Lakes, and to issue voluntary guidelines to prevent the introduction of such species through ballast water operations in other waters of the U.S. These Acts further provide that the Coast Guard must assess compliance with the voluntary guidelines and if compliance is inadequate must issue regulations that make the guidelines mandatory. These guidelines and regulations must be based on open ocean ballast water exchange and/or environmentally sound alternatives that the Coast Guard determines to be at least as ''effective'' as ballast water exchange in preventing and controlling infestations of aquatic nuisance species (ANS). The Coast Guard will use the public's comments to help define a ballast water treatment goal and standard, both of which are essential parts of determining whether alternative ballast water management methods are environmentally sound and at least as effective as open ocean ballast water exchange (BWE) in preventing and controlling infestations of ANS.

DATES: Comments and related material must reach the Coast Guard on or before June 3, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10486), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call Dr. Richard Everett, Project Manager, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone 202–267–0214. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Other NISA Rulemaking to Date

This rulemaking follows the publication of the Final Rule (USCG–1998–3423) on November 21, 2001 (66 FR 58381), for the Implementation of the National Invasive Species Act of 1996, that finalizes regulations for the Great Lakes ecosystems and voluntary ballast water management guidelines for all other waters of the United States, including reporting for nearly all vessels entering waters of the United States. Both rules follow the publication of the notice and request for comments for Potential Approaches To Setting Ballast Water Treatment Standards (USCG–2001–8737) on May 1, 2001, notice and request for comments on Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems (USCG–2001–9267) on May 22, 2001, and the publication of notice of meetings; request for comments on The Ballast Water Management Program (USCG–2001–10062) on July 11, 2001.

Request for Comments

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify the docket number for this rulemaking (USCG–2001–10486), and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Don't submit the same comment or attachment more than once. Don't submit anything you consider to be confidential business information, as all comments are placed in the docket and are thus open to public inspection and duplication. The Coast Guard will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We have no plans for any public meetings, unless you request one. Some of the information that helped us prepare this notice came from the following meetings that have already been held: meetings of the Ballast Water and Shipping Committee (BWSC) of the Federal Aquatic Nuisance Species Task Force; the workshop on ballast water treatment standards sponsored by the Global Ballast Water Program (Globallast) of the International Maritime Organization (IMO) in March 2001; and two technical workshops we held in April and May 2001. If you want a meeting, you may request one by writing to the Docket Management Facility at the address under **ADDRESSES.** Explain why you think a meeting would be useful. If we determine that oral presentations would aid this rulemaking, we will hold a public hearing at a time, date, and place announced by later notice in the **Federal Register**.

Background and Purpose

Congress, in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directs the Coast Guard to issue regulations and guidelines for ballast water management (BWM). The goal of BWM is to prevent discharged ballast water from introducing harmful nonindigenous species (NIS) to U.S. waters.

Responding to NANPCA's directive, we published a final rule (58 FR 18330, April 8, 1993). It mandated ballast water treatment (BWT) for the Great Lakes. These requirements appear in 33 CFR part 151, subpart C, and were later extended to include the Hudson River north of the George Washington Bridge (59 FR 67632, December 30, 1994), as required by the statute. In 1999, responding to NISA's directive, we published an interim rule (64 FR 26672, May 17, 1999) that sets voluntary BWM guidelines for all other U.S. waters, and BWM reporting requirements for most ships entering U.S. waters.

NANPCA and NISA require BWT to be executed by mid-ocean ballast water exchange (BWE), or by a Coast Guard-approved alternative BWT method. The alternative BWT must be at least as effective as BWE in preventing and controlling infestations of aquatic nuisance species (ANS). Therefore, in order to evaluate the effectiveness of alternative BWT methods, the Coast Guard must first define for programmatic purposes what ''as effective as [BWE]'' means. The purpose of this notice, in part, is to present for public comment various approaches to clarifying this term.

On May 1, 2001, we published a notice and request for public comments (66 FR 21807) that invited comment on four conceptual approaches to BWT standards for assessing relative effectiveness to BWE, and posed questions, all of which were developed in meetings of the BWSC. The comments we received revealed a wide range of opinion (see ''*Comments on the May 1, 2001, Notice*'' below), indicating the need for more discussion.

The present notice reflects comments received in response to the May 1, 2001 notice. It also draws on information taken from the Globallast workshop (March 2001). Finally, it draws on discussions of the four conceptual BWT approaches by participants invited to the April and May 2001 Coast Guard workshops. (The report of the Globallast workshop is available at *http://globallast.imo.org*. Reports from the Coast Guard workshops, when completed, will be available at *http://dms.dot.gov*.)

Comments on the May 1, 2001, Notice

We received 22 written responses to our May 1, 2001 request for comments, which set out 4 optional approaches for BWT standards, posed 5 questions related to setting the standard, and posed 3 questions relating to implementation issues. We will summarize responses to the implementation questions when we propose a specific implementation approach and testing protocol at a later date. Here are the questions we asked about setting standards, along with a summary of the comments we received, and our response.

1. *Should a standard be based on BWE, best available technology [BAT], or the biological capacity of the receiving ecosystem? What are the arguments for, or against, each option*? Thirteen respondents specifically addressed this question. Five commenters, all associated with the shipping industry, recommended that a quantification of the effectiveness of BWE be used to set the standard. All five also stated that the language of NISA dictates this approach. Four commenters favored a BAT approach. Four commenters favored a biological capacity approach.

Participants in both the Globallast and Coast Guard workshops recommended against basing a ballast water treatment standard on the effectiveness, either theoretical or measured, of BWE. The Globallast report on the findings of the workshop stated: ''It is not appropriate to use equivalency to ballast water exchange as an effectiveness standard for evaluating and approving/accepting new ballast water treatment technologies, as the relationship between volumetric exchange and real biological effectiveness achieved by ballast water exchange is extremely poorly defined. This relationship cannot be established without extremely expensive empirical testing.'' Participants in the two Coast Guard workshops recommended that standards be based on the level of protection needed to prevent biological invasions. The recommendations are neither endorsed nor discredited by the Coast Guard.

2. *If BWE is the basis for a standard, what criterion should be used to quantify effectiveness: the theoretical effectiveness of exchange, the water volume exchanged (as estimated with physical/chemical markers), the effectiveness in removing or killing all or specific groups of organisms, or something else; and why*? Twelve commenters specifically addressed this question. None of the 12 thought that theoretical efficacy should be used. Three recommended using volumetric effectiveness, and five considered measured effectiveness in killing/removing organisms to be the most appropriate measure. One commenter thought that all three metrics should be used, and four commenters re-expressed their opinion that exchange should not be the basis for the standard.

3. *How specifically should the effectiveness of either BWE or best available technology be determined (i.e., for each vessel, vessel class, or across all*

vessels) before setting a standard based on the capabilities of these processes? Ten respondents specifically addressed this question. One commenter recommended determining the effectiveness of exchange on a ship-by-ship basis, two thought effectiveness should be calculated for different ''risk classes'' of vessels or sectors of the shipping industry, one recommended that exchange be evaluated with hydrodynamic models before being evaluated on test vessels, and six advocated the use of a broad average effectiveness calculated across many types of vessels and trading patterns.

4. *What are the advantages and disadvantages of considering the probability of conducting a safe and effective BWE on every voyage when estimating the overall effectiveness of BWE*? Eleven respondents specifically addressed this question. Six comments came from vendors of ballast water treatment systems or from public and private resource protection entities. Five of these said the probability of conducting an exchange must be considered at some level, in order to better represent BWE's ''real world'' capability. The sixth said we should take only completed exchanges into account, because class societies could not attest to the effectiveness of systems when safety exemptions were considered. All five shipping industry commenters also advocated looking only at completed exchanges, because too many variables affect whether or not a full exchange can be conducted. The Coast Guard considers the feasibility of conducting a mid-ocean exchange to be one of the significant issues in evaluating BWE.

5. What are the advantages and disadvantages of expressing a BWT standard in terms of absolute concentrations of organisms versus the percent of inactivation or removal of organisms? Twelve respondents specifically addressed this question. Several expressed concern that if ballast water were taken on in a location with a very low concentration, the vessel might not have to use any treatment to meet a concentration standard. Conversely, several commenters argued that a high percentage reduction in organisms, when the initial concentration was very high, could still result in the discharge of a high concentration of organisms. These concerns should be kept in mind when commenting on the alternative standards presented below. It is important to note that, for purposes of testing the theoretical effectiveness of a technology, if testing is conducted using the highest expected natural concentrations of organisms as the concentrations in the test medium (as recommended by participants in the Globallast and the USCG workshops), the percent reduction approach effectively becomes a concentration approach. This is because the standard percent reduction (for example, 95%) of an absolute concentration produces an absolute concentration of remaining organisms. On the other hand, for purposes of assessing compliance with the standard at the level of an individual vessel, the two approaches could have very different results.

Further Comments Needed

We seek more comments because the discussion of BWT standards has focused, until now, on the suitability of basing standards on existing technology, rather than on developing new technology that better meets the congressional intent of eliminating ballast water discharge as a source of harmful NIS.

As we noted above, the governing statutes (NANCPA and NISA) specify the use of BWE and provide that any alternative form of BWT be at least as effective as BWE in preventing and controlling the spread of ANS. At present, no alternatives have been approved, in part, perhaps, because the effectiveness of the BWE benchmark itself is not well defined. Furthermore, concerns have been voiced that mid-ocean BWE is difficult to quantify in practice, cannot be safely performed on all transoceanic voyages, and by current definition cannot be conducted on voyages that take place within 200 miles of shore and in waters shallower than 2000 meters deep.

There are only limited scientific data on the effectiveness of BWE. A few empirical studies (see references: 5, 13, 14, 15, 18) listed in this notice, indicate that BWE results in the actual exchange of 88% to 99% of the water carried in a ballast tank. The average result is quite close to the theoretical 95% efficiency of Flow-Through Exchange.

However, knowing that we exchanged 88–99% of the water does not necessarily tell us we eliminated 88–99% of the danger of ANS remaining in the ballast tank. Some of the empirical studies (see references: 5, 13, 14, 15, 18) also looked at that aspect of BWE. They found that BWE resulted in reducing the number of organisms by varying degrees, from 39% to 99.9%, depending on the taxonomic groups and ships studied.

The variability in this data reflects the fact that the studies involved different ships under experimentally uncontrolled conditions, used different methods of calculating the percentage of water exchanged, and used different taxonomic groups to evaluate BWE's effectiveness in reducing the presence of ANS.

Technical experts at the Coast Guard and IMO workshops, and comments by the National Oceanic and Atmospheric Administration, agree that scientifically determining even the quantitative effectiveness of BWE (leaving aside its qualitative effectiveness) will be challenging.

We think Congress viewed BWE as a practical but imperfect tool for treating ballast water, and wanted to ensure that approved alternatives would not be less effective than BWE is known to be. As currently practiced, BWE produces varying results and sometimes may remove as few as 39% of the possible harmful organisms from the ballast tank. BWE is affected by a number of variables, cannot be used on coastal voyages (as currently defined), and often cannot be used by a ship on any of it's voyages due to safety concerns.

The Coast Guard is currently considering an approach in which an alternative BWT method would be judged to be at least as effective as BWE if it:

- Produces predictable results,
- Removes or inactivates a high proportion of organisms,
- Functions effectively under most operating conditions, and
- Moves toward a goal that expresses the congressional intent to eliminate ballast water discharge as a source of harmful NIS.

In this notice, we are seeking comments that will help us define the standards and goals that would meet these criteria.

Issues for further comment

Your comments are welcome on any aspect of this notice, including the submission of alternative goals or standards that were not presented in today's notice. The possible goals and standards presented here are intended to stimulate discussion that will ultimately lead to a standard for assessing BWT effectiveness that will have broad scientific and public support. We particularly seek your input on the ''Questions'' we raise below. The Questions (Q1–Q6) refer to the following possible Goals (G1–G3) and Standards (S1–S4).

Possible Goals

G1. No discharge of zooplankton and photosynthetic organisms (including holoplanktonic, meroplanktonic, and demersal zooplankton, phytoplankton and propagules of macroalgae and

aquatic angiosperms), inclusive of all life-stages. For bacteria, Enterococci and Escherichia coli will not exceed 35 per 100 ml and 126 per 100 ml of treated water, respectively.

G2. Treat for living organisms at least to the same extent as drinking water.

G3. Ballast water treatment technologies would demonstrate, through direct comparison with ballast water exchange, that they are at least as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species for the vessel's design and route.

Possible Standards

S1. Achieve at least 95% removal, kill or inactivation of a representative species from each of six representative taxonomic groups: vertebrates, invertebrates (hard-shelled, soft shelled, soft-bodied), phytoplankton, macro-algae. This level would be measured against ballast water intake for a defined set of standard biological, physical and chemical intake conditions. For each representative species, those conditions are:

- The highest expected natural concentration of organisms in the world as derived from available literature and
- A range of values for salinity, turbidity, temperature, pH, dissolved oxygen, particulate organic matter, and dissolved organic matter. (GLOBALLAST PROPOSAL ''A''.)

S2. Remove, kill or inactivate all organisms larger than 100 microns in size. (GLOBALLAST PROPOSAL ''B''.)

S3. Remove 99% of all coastal holoplanktonic, meroplanktonic, and demersal zooplankton, inclusive of all life-stages (eggs, larvae, juveniles, and adults). Remove 95% of all photosynthetic organisms, including phytoplankton and propagules of macroalgae and aquatic angiosperms, inclusive of all life stages. Enterococci and Escherichia coli will not exceed 35 per 100 ml and 126 per 100 ml of treated water, respectively. (COAST GUARD WORKSHOP PROPOSAL ''A''.)

S4. Discharge no organisms greater than 50 microns in size, and treat to meet federal criteria for contact recreation (currently 35 Enterococci/ 100 ml for marine waters and 126 E. coli /100 ml for freshwaters). (COAST GUARD WORKSHOP PROPOSAL ''B''.)

Note: The capability of current technology to remove or kill 95%–99% of the zooplankton or phytoplankton, or to remove 100% of organisms larger than 50 or 100 microns, under the operational flow and volume conditions characteristic of most commercial ocean-going vessels, is not well established. Workshop participants felt these removal efficiencies are practical and realistic initial targets. BWT to these levels would provide increased protection compared to no BWT at all, or to BWE carried out only when vessel design and operating conditions permit.

Questions

In answering the questions, please refer to Questions, Goals, and Standards by their designations (for example: Q1, G2, S3).

The following questions refer to the goals (G1–G3) and standards (S1–S4) set out in ''Issues for Further Comment,'' above.

Q1. Should the Coast Guard adopt G1, G2, G3, or some other goal (please specify) for BWT?

Q2. Should the Coast Guard adopt any of the standards, S1–S4 as an interim BWT standard? (You also may propose alternative quantitative or qualitative standards.)

Q3. Please provide information on the effectiveness of current technologies to meet any of the possible standards. Please comment, with supporting technical information if possible, on the workshop participants' assessment that these standards are ''practical and realistic initial targets''.

Q4. General comments on how to structure any cost-benefit or cost-effectiveness analysis that evaluates the above four possible standards. We are requesting comments on how the Coast Guard should measure the benefits to society of the above possible standards in either qualitative or quantitative terms. How would the benefits be measured considering each possible standard would continue to allow the introduction of invasive species, but at different rates? What would the costs be to industry in each of the four proposals? How would the cost to industry differ by possible standard?

Q5. What impact would the above four standards have on small businesses that own and operate vessels?

Q6. What potential environmental impacts would the goals or standards carry?

Issues for Future Consideration

The possible goals and standards in today's notice set out basic biological parameters for the discharge of aquatic organisms ranging from bacteria to higher taxonomic groups and are intended to provide a starting point for discussion. If the framework for addressing BWT effectiveness that is discussed in this notice were adopted, the final standards would be derived from a process that incorporates the expertise of the scientific community.

We know that many practical problems will need to be addressed in setting up a program for testing and approving BWT alternatives. We think it is premature to ask for comments on these issues until an approach (or at least an interim approach) for assessing BWT effectiveness is chosen, because many procedural aspects of the testing process will be dependent on the specific nature of the selected approach. However, we may ultimately need to address issues such as using standard indicators as evaluation tools, as participants in both Globallast and the Coast Guard workshops recommended. This would depend on:

- Identifying and validating species or physical/chemical metrics that can be used as practical and efficient standard indicators. This in turn would depend on:
- Improving sampling and analytic techniques by:
- Setting detection limits and degrees of statistical uncertainty for methods and protocols used to enumerate the abundance of organisms in treated ballast water, and on
- Setting standard testing conditions for the concentrations of indicators and a suite of physical and chemical parameters. For example, testing might be based on what the available literature shows to be the highest expected natural concentration in the world for each indicator species or variable under a range of conditions for other parameters. (This approach was recommended by participants in both the Globallast and USCG workshops.) The suite of parameters would include turbidity, dissolved and particulate organic material, salinity, pH, and temperature.

Preliminary Regulatory Evaluation

At this early stage in the process, the Coast Guard cannot anticipate whether any proposed or final rules will be considered significant, economically or otherwise, under Executive Order 12866 or under the Department of Transportation regulatory policies and procedures [44 FR 11034, February 26, 1979]. At this time, the economic impact of any regulations that may result from this notice cannot be accurately determined. The Coast Guard plans to use comments received on this advance notice of proposed rulemaking to assess these economic impacts. We will then prepare either a regulatory assessment or a detailed regulatory evaluation as appropriate, which will be placed in the docket.

To facilitate the comment process on this notice, Table 1 below presents cost information compiled from recent technical literature on ballast water technologies. Several points should be noted when reviewing this information.

First, these cost estimates are not all expressed in a constant unit. Comparisons of estimates across studies, therefore, should be conducted with caution. Second, cost estimates from the Cawthron (1998) and Agriculture, Fisheries, and Forestry—Australia (2001) reports are converted from Australian dollars based on exchange rates published October 16, 2001 ($0.5136 AUD = $1.00 US Dollar). Third, these cost estimates are not expressed in constant dollars; they have not been adjusted for inflation. Finally, these costs are derived primarily through experimental and pilot projects, not actual application in the field.

At this time, the Coast Guard does not endorse any of these studies in any way; we have not yet conducted detailed cost-benefit analysis on this subject. We are making this information available to facilitate public discussion of the questions that we are posing above. We also welcome any comments and supporting documentation, pertaining to the cost estimates summarized below.

TABLE 1.—COST ESTIMATES FOR BALLAST WATER ALTERNATIVE TECHNOLOGIES FROM THE RECENT LITERATURE

Ref.	Technology	Cost	Remark
1	Ballast water exchange	$4.79–$7.28 per cubic meter	Costs are reduced approximately 50 percent if gravity ballasting can be accomplished.
4	Ballast water exchange	$4,500 fuel cost per exchange	56,000 tons of ballast water flow through 3 volumes; time for exchange about 3 days.
4	Ballast water exchange	$3,100–$8,800 for fuel and pump maintenance per exchange.	Estimates for conditions on container ships, bulk carriers, and two types of tankers; 3 dilutions; time for exchange ranged from 33 to 55 hours.
4	Ballast water exchange	$16,000–$80,000 total cost of exchange.	Estimates for conditions on VLCC and Suezmax bulker.
9	Ballast water exchange	Qualitative discussion of cost implications.	Time lost during transit.
16	Ballast water exchange	$0.02–$0.10 per metric ton of ballast water.	Estimates based on study of California ports.
1	Onshore treatment facility	$0.66–$27.00 per cubic meter	Cost estimates driven by additional infrastructure required in ports.
6	Onshore treatment facility	$1.4 billion for entire treatment facility	Facility in Valdez, Alaska; only ballast water treatment facility currently in use in U.S.; covers 1,000 acres of land, processes about 16m gallons of ballast water daily.
6	Onshore treatment facility	$9m–19m for infrastructure; $0.09–$0.41 per metric ton of ballast water treated.	Estimate based on port-based facility located on land or a floating platform.
9	Onshore treatment facility	Qualitative discussion of cost implications.	Costs minimized in onshore facility located where vessels are already required to stop for customs and quarantine inspection; time delay for docking and deballasting.
16	Onshore treatment facility	$7.6m–$49.7m for infrastructure; $142,000–$223,000 for annual maintenance; $1.40–$8.30 per metric ton of ballast water treated.	Estimates based on study of California ports.
1	Thermal treatment	$10.83–$17.52 per cubic meter	Heating/flushing process.
6	Thermal treatment	Qualitative discussion of cost implications.	Very expensive labor and materials cost to retrofit heating coils in ballast tanks; if additional heat generation required then fuel consumption increases.
11	Thermal treatment	$75,000–$275,000 per system	Most cost effective in warmer waters.
1	UV treatment	$31.66–$186.53 per cubic meter	Low cost estimate represents UV used alone; high cost estimate reflects combination with hydrocyclone.
2	UV treatment	$10,200–$545,000 per system for infrastructure; $2,200–$11,000 per system for annual maintenance.	Cost estimates for 1,200 GPM and 8,000 GPM systems.
7	UV treatment	$250,000–$1m life-cycle per treatment system.	Study part of technology demonstration project.
9	UV treatment	Qualitative discussion of cost implications.	Capital investment very high; cost for installation and pipe modifications.
1	Chemical treatment	$0.47–$77.88 per cubic meter	Estimate based only on operating cost.
7	Chemical treatment	$2m–$4m life-cycle per treatment system.	Study part of technology demonstration project.
9	Chemical treatment	Qualitative discussion of cost implications.	Installation and engineering of chemical dosing system is expensive; low cost effectiveness; large capital investment.
9	Filtration	Qualitative discussion of cost implications.	Large capital investment; cost of disposal of concentrated filtrate.
8	Rapid response	$1.5m per strike	Australia, method involved quarantine of the port and destruction of organisms when detected on a vessel in port.

As with the cost information provided above, the Coast Guard does not currently endorse any of these studies in any way; we have not yet conducted our own detailed assessment of their methodologies and results. Rather, we are making this information available to facilitate public discussion of the questions that we are posing above. We

also welcome any comments, and supporting documentation pertaining to the damage estimates summarized below.

Aquatic Nuisance Species

Adverse environmental and economic effects of some ANS have been documented in a number of studies. As with the cost information provided above, the Coast Guard does not currently endorse any of these studies in any way; we have not yet conducted our own detailed assessment of their methodologies and results. Rather, we are making this information available to facilitate public discussion of the questions that we are posing above. We also welcome any comments, and supporting documentation pertaining to the damage estimates summarized below.

The most studied species, the zebra mussel, has affected the ecology and economy of the Great Lakes since introduction in the late 1980s. Some scientists believe the mussel is responsible for ''profound changes in the lower food web of the Great Lakes'' and massive algal blooms (see reference: 3). Zebra mussels may clog intake pipes for industrial and municipal plants, and may cause extended shut downs in order to chemically treat the pipes. In the Great Lakes basin, the annual cost of zebra mussel control has been estimated at from $100 to $400 million. Dramatically altering the Great Lakes ecosystems, zebra mussels have now spread throughout the Mississippi River drainage basin, thousands of inland lakes, and are threatening the West Coast (see reference: 3). There is evidence that The San Francisco and Chesapeake Bays, Gulf of Mexico, and Hawaiian coral reef may be threatened by other non-indigenous fish, mollusks, crustaceans, and aquatic plants (see reference: 3). A 1999 report (see reference: 12) estimates that the environmental damage caused by non-indigenous species in the United States (both land and water) is $138 billion per year. The report further states that there are approximately 50,000 foreign species and the number is increasing. It is estimated that about 42% of the species on the Threatened or Endangered species lists are at risk primarily because of non-indigenous species.

The above damage estimate pertains to all non-indigenous species, both land and water. Table 2 below, adapted from the report (see reference: 12), presents estimates of the annual damages and costs of aquatic species in the United States.

TABLE 2.—ONE ESTIMATE OF THE TOTAL ANNUAL COST OF AQUATIC INVASIVE SPECIES IN BILLIONS OF DOLLARS

[See reference: 12]

Species	Total [1]
Aquatic weeds	$0.110
Fish	1.000
Green crab	0.044
Zebra mussel	5.000
Asian clam	1.000
Shipworm	0.205
Total	7.359

[1] Total annual cost of species.

Small Entities

We are unable, at this time, to determine whether, under the Regulatory Flexibility Act (5 U.S.C. 601–612), any regulations resulting from this ANPRM would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that a rule establishing standards for evaluating the effectiveness of BWT would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this ANPRM so that they can better evaluate its potential effects on them and participate in the rulemaking. If you believe that this ANPRM could lead to a final regulation that would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please contact Dr. Richard Everett where listed under **FOR FURTHER INFORMATION CONTACT**, above.

Collection of Information

Any final rule resulting from this ANPRM could call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.). At this time we are unable, however, to estimate the number of responders or the burden of responding on each responder. We will include our estimates of this information in a later notice of proposed rulemaking and allow for comments on those estimates before issuing a final rule. As always, you are not required to respond to an information collection unless it displays a valid OMB approval number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have not yet analyzed whether any rule resulting from this ANPRM would have implications for federalism, but we are aware of efforts by various states to stem invasive species in their waters. We will continue to consult with the states through the Ballast Water Working Group.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As stated above, we do not yet know the costs that would be associated with any rule resulting from this ANPRM. The Coast Guard will publish information regarding costs using the comments received on this ANPRM in a future publication.

Taking of Private Property

We anticipate that any proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

We anticipate that any proposed rule would meet the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We anticipate that any proposed rule will be analyzed under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, and any such rule would not create an environmental risk to health or

risk to safety that might disproportionately affect children.

Indian Tribal Governments

We anticipate that any proposed rule would not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would likely not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, we recognize that ANS may pose significant concerns for some tribal governments and are committed to working with tribes as we proceed with this rulemaking.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how any rule resulting from this ANPRM might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order, and how best to address the ANS concerns of the tribal governments.

Energy Effects

We have not analyzed this ANPRM under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have not determined whether it is a ''significant energy action'' under that order because we do not know whether any resulting rule would be a ''significant regulatory action'' under Executive Order 12866. Once we determine the economic significance of any rule stemming from this ANPRM, we will determine whether a Statement of Energy Effects is required.

Environment

The Coast Guard will consider the environmental impact of any proposed rule that results from this advance notice of proposed rulemaking. We will include either Environmental Assessment or Environmental Impact Statement in the docket for any such rulemaking as appropriate.

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Dated: August 27, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH42

Evidence for Accrued Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its

adjudication regulations dealing with accrued benefits, those benefits to which an individual was entitled under existing ratings or decisions, or those based on ''evidence in the file at date of death'' which were due and unpaid at the time the individual died. ''Evidence in the file at date of death'' would be interpreted as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. Further, ''evidence necessary to complete the application'' for accrued benefits would be interpreted as information necessary to establish that the claimant is within the category of eligible persons and that circumstances exist which make the claimant the specific person entitled to the accrued benefits. These amendments would reflect our interpretation of the governing statute.

DATES: Comments must be received by VA on or before May 3, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, Room 1154, 810 Vermont Ave., N.W., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AH42.'' All comments will be made available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., N.W., Washington, DC 20420, (202) 273–7138.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 5121(a) states that periodic monetary benefits under laws administered by the Secretary of Veterans Affairs to which an individual was entitled at death, either under existing ratings or decisions, or based on ''evidence in the file at date of death,'' which are due and unpaid for a period not to exceed two years shall, upon death of that individual, be paid to a properly entitled claimant. This statutory provision lists the persons who are eligible to be paid accrued benefits, in order of preference in the case of a deceased veteran, and specifies the circumstances under which they will be entitled. Section 5121(c) states that the application for accrued benefits must be filed within one year after the date of death, and that if a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application.

In *Hayes v. Brown,* 4 Vet. App. 353, 360 (1993), the Court of Veterans Appeals (now the Court of Appeals for Veterans Claims) stated that ''the regulatory framework that has been established to implement section 5121(a), (c) is confusing at best.'' The Court also found the provisions of VA's Adjudication Procedures Manual (M21–1) at Part IV, Chapter 27, and Part VI, Chapter 5, to be confusing with regard to what post-date-of-death evidence is acceptable, pointing out that to the extent these manual provisions affect what post-date-of-death evidence may be considered, they are substantive rules. The *Hayes* panel also pointed out an apparent statutory ambiguity, noting that while section 5121(a) permits only ''evidence in file at the date of death,'' section 5121(c) seems to contradict, or at least qualify, that provision by stating, ''[i]f a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application.''

We propose to rewrite 38 CFR 3.1000 to remove redundant language and to define both what constitutes ''evidence in the file at the date of death'' for purposes of section 5121(a) and what constitutes ''evidence necessary to complete the application'' for purposes of section 5121(c).

Before granting accrued benefits, VA must determine whether the deceased individual had established entitlement to a periodic monetary benefit that was due and unpaid on the date of death. Also, VA must determine (1) whether the application for accrued benefits provides sufficient information to establish that the claimant falls within the category of persons who may be eligible for accrued benefits, and (2) whether circumstances exist under which that person is entitled to the benefits that have accrued.

38 CFR 3.1000(c)(1) currently states that if a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. We propose to add provisions to § 3.1000(c)(1) to reflect our interpretation of what constitutes ''evidence necessary to complete the application'' under 38 U.S.C. 5121(c). Such evidence would be information establishing that the claimant is within the category of persons eligible for accrued benefits and that circumstances exist which make the claimant the specific person entitled to payment of all or any part of benefits which may have accrued. We believe that the proposed language would make it clear that the ''evidence'' in question is that information necessary to establish that the applicant for accrued benefits is the person eligible for and entitled to those benefits. Further, we believe that the proposed language would ensure that the ''evidence necessary to complete the application'' would not be confused with the ''evidence in the file at date of death'' referred to in 38 U.S.C. 5121(a), which concerns whether an individual was entitled to benefits at the date of his/her death based on ''evidence in the file.'' This will also align the interpretation of this statute with that of 38 U.S.C. 5102, as amended by the Veterans Claims Assistance Act of 2000, Pub. L. 106–475.

38 CFR 3.1000(d)(4) purports to define ''evidence in the file at date of death.'' Rather than defining that statutory term, this regulation currently states that in certain instances VA may accept identifying, corroborating or verifying information from the death certificate and evidence submitted with the claim for accrued benefits to support prima facie evidence already in the file. These current provisions do not define the term ''evidence in the file.''

A claimant who meets all eligibility requirements for a VA benefit is not entitled to that benefit (and there are no payments due) until he or she has filed a specific claim and VA received evidence establishing entitlement. Therefore, there can be no accrued benefits unless the deceased individual had filed a specific claim and VA had received sufficient evidence on or before the date of death to establish entitlement to a VA benefit. *See Jones* v. *West,* 136 F.3d 1296, 1299 (Fed. Cir. 1998) (in the absence of an existing rating or decision, decedent must have had a claim pending at the time of death). Therefore, we propose to define ''evidence in the file at date of death'' according to when the evidence was received, i.e., the evidence must have been in VA's possession on or before the date of death.

We propose to revise § 3.1000(d)(4) to define ''evidence in the file at the date of death'' as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. We believe this definition accurately reflects the meaning of the statutory provisions of section 5121(a). This change would supersede the

current provisions at 38 CFR 3.1000(d)(4).

Accordingly, we propose to delete from M21–1 provisions that are inconsistent with our proposed definition. Those provisions state that certain classes of evidence not in file on the date of death will be considered to provide a basis for an award of accrued benefits and permit an award of accrued benefits to be based on inferences or prospective estimation drawn from information in file on the date of death. Those provisions are in M21–1, part IV, paragraphs 27.08b, c, d, e, and f.

We also propose to delete provisions in M21–1, part VI, paragraph 5.06, that are duplicative of governing statutes, inconsistent with our interpretation of those statutes, or superseded by these proposed regulatory amendments. Such provisions are contained in paragraph 5.06a, which describes general principles applicable to accrued benefits rating decisions.

M21–1, part VI, paragraph 5.06b, in the introductory text, purports to permit the acceptance of a claim for disability pension as an informal claim for disability compensation, and vice versa, only if a claim for accrued benefits is filed within 1 year of the date of receipt of the disability claim. This is inconsistent with 38 CFR 3.151(a), which permits VA to consider a claim for compensation to be a claim for pension and a claim for pension to be a claim for compensation without regard to any accrued benefits claim. Neither § 3.151(a) nor 38 U.S.C. 5101 limits acceptance of such claims only to where a claim for accrued benefits is received. Because the paragraph 5.06b introductory text is inconsistent with the regulations and statute, we propose to delete that introductory text.

M21–1, part VI, paragraph 5.06b(3), concerning payment of accrued benefits for the month of death, is duplicative of the regulations and of governing law. We propose to delete this paragraph as unnecessary.

M21–1, part VI, paragraphs 5.06c and d, are inconsistent with the proposed amendments, and we propose to delete them.

In accordance with the foregoing discussion, we would delete from M21–1, as inconsistent with our interpretation of our statutory authority, duplicative of governing laws, or superseded by these amendments, provisions in Part IV, paragraphs 27.08b, c, d, e, and f, and part VI, paragraphs 5.06a, b introductory text, b(3), c, and d, which relate to rating decisions, claims pending at death, payment for the month of death, consideration of evidence not in VA's possession on the date of the beneficiary's death, the sufficiency of evidence in VA's possession on that date, and inferences or predictions from such evidence.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1000 is amended by revising the section heading, paragraph (c)(1), and paragraph (d)(4) introductory text, to read as follows:

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

* * * * *

(c) * * *

(1) If an application for accrued benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of eligible persons under the provisions of paragraphs (a)(1) through (a)(4) or paragraph (b) of this section and that circumstances exist which make the claimant the specific person entitled to payment of all or part of any benefits which may have accrued, VA shall notify the claimant:

(i) Of the type of information required to complete the application;

(ii) That VA will take no further action on the claim unless VA receives the required information; and

(iii) That if VA does not receive the required information within 1 year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

* * * * *

(d) * * *

(4) *Evidence in the file at date of death* means evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

* * * * *

[FR Doc. 02–5134 Filed 3–1–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 0127–1127; FRL–7151–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Iowa. This revision approves numerous rules adopted by the State in 1998, 1999, and 2001. This includes rules pertaining to

definitions, compliance, permits for new or existing stationary sources, voluntary operating permits, permits by rule, and testing and sampling methods.

These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards, ensure consistency between the State and Federally approved rules, and ensure Federal enforceability of the state's air program rule revisions according to section 110.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 3, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–4937 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 0126–1126; FRL–7151–8]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Iowa Operating Permits Program for air pollution control. This revision approves numerous rules adopted by the state in 1998, 1999, and 2001. This includes rules pertaining to issuing permits, Title V operating permits, voluntary operating permits, and operating permits by rule for small sources. These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revisions.

In the final rules section of the **Federal Register**, EPA is approving the state's operating permits program revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 3, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 15, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–4939 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 02–19; FCC 02–30]

Non-geostationary Satellite Orbit, Fixed Satellite Service in the Ka-band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, we initiate a proceeding to determine the means by which multiple satellite network systems will be licensed to operate in spectrum designated on a primary basis for the non-geostationary satellite orbit, fixed-satellite service (''NGSO FSS''), and to determine service rules deferred in previous orders that will apply to Ka-band NGSO FSS applicants. Our goals in this proceeding are similar to those we have pursued for other satellite services: to promote competition through opportunities for new entrants and to provide incentives for prompt commencement of service to the public using state-of-the-art technology. The NGSO FSS applications in the current processing round Second Round Ka-Band (''Second Round'') propose to provide—through a variety of system designs—services such as high-speed Internet and on-line access, as well as other high-speed data, video and telephony services. As a result of the first processing round First Round Ka-Band (''First Round'') there is one NGSO FSS system authorized to provide service in the Ka-band. Thus, implementation of these Second Round NGSO FSS systems will introduce additional means of providing advanced broadband services to the public and will increase satellite and terrestrial services competition.

DATES: Comments are due on or before April 3, 2002; Reply Comments are due on or before April 3, 2002.

ADDRESSES: All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth

Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information concerning this rulemaking proceeding contact: Alyssa Roberts at (202) 418–7276, Internet: *aroberts@fcc.gov,* or Robert Nelson at (202) 418–2341, Internet: *rnelson@fcc.gov,* International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: We propose to license all five of the Second Round Ka-band applicants seeking access to the spectrum designated on a primary basis to NGSO FSS systems, specifically the 18.8–19.30 GHz and 28.60–29.10 GHz frequency bands. Our preference is to have an outcome dictated by the service market rather than by regulatory decision. We seek comment on the best means to accommodate all of the applicants within the available spectrum, bearing in mind the Commission's previous authorization to Teledesic to operate domestically in the 500 megahertz of paired spectrum designated for primary NGSO FSS services. We propose four possible options for spectrum sharing as a starting point for comment. These proposed options are based on features of the pending applications, a proposal received from one of the applicants, and upon sharing mechanisms we have previously employed with other satellite services.

In adopting this Notice of Proposed Rulemaking (NPRM), we intend to allow expeditious deployment of NGSO FSS in the United States for the benefit of consumers by establishing a spectrum sharing plan and service rules so that systems can be implemented in compliance with International Telecommunication Union (ITU) deadlines, and by allowing market forces to play a role in the implementation of these systems. We believe it is in the public interest to provide opportunities for multiple systems to compete, providing more service choices and competitive prices in the marketplace. Our expectation is that NGSO FSS providers will provide a vigorous, additional source of broadband service for consumers, in competition with existing satellite and terrestrial services. This NPRM puts forth several options for assigning shared NGSO FSS spectrum resources, including incentives for rapid implementation of service. We believe that the proposals in this NPRM are sufficiently flexible to accommodate the NGSO FSS systems set forth by the pending applicants. We seek comment on these and other possible sharing proposals. Finally, we request any other suggestions commenters might set forth with respect to sharing or service rules for NGSO FSS systems.

We also request comment on additional service rules for NGSO FSS licensees. We start with our existing satellite service rules for Ka-band FSS systems adopted in the Third Report and Order.[1] While that order resolved service rules and licensing qualifications for First Round applicants, the Commission deferred consideration of certain requirements for future NGSO FSS systems to a later processing round.

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA),[2] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [3] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

This Notice of Proposed Rulemaking (NPRM) seeks comment on proposed options for spectrum sharing among the second round Ka-Band non-geostationary satellite orbit fixed-satellite service (NGSO FSS) applicants. The Commission proposes to license all five of the applicants and seeks comment on which option may best accommodate the applicants. Implementation of these NGSO FSS systems will introduce additional means of providing broadband services to consumers as quickly as possible. This NPRM also seeks comment on our proposals for service rules to apply to NGSO FSS systems.[7] These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the NGSO FSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest and enables the U.S. to preserve its ITU international coordination priority. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public. If commenters believe that the proposed rules discussed in the Notice require additional RFA analysis, they should include a discussion of this in their comments.

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary satellite orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services ''Not Elsewhere Classified.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts.[8] This Census Bureau category is very broad, and commercial satellite services constitute only a subset of the total number of entities included in the category.

The rules proposed in this document apply only to entities providing NGSO FSS. Small businesses will not likely have the financial ability to become

[1] Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Services and for Fixed Satellite Services, Third Report and Order, 62 FR 61448 November 18, 1997, 12 FCC Rcd 22310 (1997) (''Third Report and Order''). In May 2001, the Commission issued a Memorandum Opinion and Order disposing of petitions for clarification or reconsideration of the Third Report and Order filed by Motorola Global Communications, Inc. and Hughes Communications Galaxy, Inc. In this order, the Commission noted that a petition for reconsideration or clarification of the Third Report and Order filed by Teledesic would be addressed in notice and comment proceedings pertaining to a second licensing round for Ka-band satellite systems. 16 FCC Rcd 11464 (2001) Section 18.

[2] The RFA, 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[3] 5 U.S.C 605(b).

[4] Id. at 601(6).

[5] Id. at 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] Small Business Act, 15 U.S.C. 632.

[7] See paragraphs 37–44, supra.

[8] 13 CFR 121.201, North American Industry Classification System (NAICS) Code 51334.

NGSO FSS system operators because of the high implementation costs associated with satellite systems and services. Since there is limited spectrum and orbital resources available for assignment, we estimate that only five applicant entities, whose applications are pending, will be authorized by the Commission to provide these services. We expect that none of these would be considered small businesses under the SBA definition. Thus, the rules proposed in this Notice of Proposed Rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**. See 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to sections 4(1), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r), this Notice of Proposed Rulemaking is hereby ADOPTED.

Service Rules. Because our *Third Report and Order* focused on First Round GSO and NGSO systems, we deferred consideration of several NGSO FSS rules to a later processing round. We now seek comment on the following licensing and service rules in light of the decisions made in prior orders, our goal of ensuring expedited licensing, and considering the NGSO FSS spectrum sharing proposals presented in this *Notice.*

Financial qualifications. As noted above, the Commission waived the financial qualification requirement for the First Round Ka-band applicants, but deferred consideration of the applicability of this rule to Second Round applicants to a later processing round. Historically, the Commission has fashioned financial requirements for satellite services on the basis of entry opportunities in the particular service being licensed.[9] In cases where it can accommodate all pending applications and future entry is possible, the Commission has not looked to current financial ability as a prerequisite to a license grant. But in situations where potential applicants appear to have requirements that exceed the available spectrum or orbital resources, the Commission has invoked a strict financial qualifications standard. This policy is designed to make efficient use of spectrum by preventing underfinanced applicants from depriving another fully capitalized applicant of the opportunity to provide service to the public. Since this *NPRM* proceeds from the assumption that a spectrum sharing plan can be devised to accommodate all the pending applicants' proposed systems and future entry, we are not proposing a strict financial qualification standard for this service with respect to the Second Round NGSO FSS applicants. If, however, the record developed in this proceeding indicates that the allocated spectrum cannot accommodate all applicants, we may impose a strict financial qualifications standard.

Should we determine the need to impose strict financial qualifications, we seek comment on whether to modify our existing financial qualifications requirement. Presently, NGSO FSS applicants are required to demonstrate internal assets or committed financing sufficient to cover construction, launch, and first-year operating costs of its entire system. We propose to require the commitment of funds not previously committed for any other purpose. If strict financial qualifications are invoked, applicants for NGSO FSS licenses will be required to demonstrate that they have assets or committed financing for their NGSO FSS systems that are separate and apart from any funding necessary to construct and operate any other licensed satellite systems. We request comment on this proposal, and ask whether there are alternative means of oversight we can employ to ensure that licensees will be able to commence timely service to the public.

Implementation milestones. As with all other satellite services, we propose that all NGSO FSS Ka-band licensees adhere to a strict timetable for system implementation. Milestones are intended to ensure that licensees are building their systems in a timely manner and that the spectrum resources are not being held by licensees unable or unwilling to proceed with their plans to the detriment of other operators who might benefit the public interest by implementing satellite systems. We propose implementation milestones that track schedules recently imposed on other NGSO systems.[10] Specifically, we propose that NGSO FSS Ka-band licensees must enter into a non-contingent satellite manufacturing contract for the system within one year of authorization, complete critical design review within two years of authorization, begin physical construction of all satellites in the system within two and half years of authorization, and complete construction and launch of the first two satellites within three and a half years of grant. The entire system will have to be launched and operational within six years of authorization. As is consistent with our practice in other services, we propose to require operators to submit certifications of milestone compliance, or file a disclosure of non-compliance, within 10 days following a milestone specified in the system authorization.

Alternatively, we propose to modify the implementation milestones for NGSO FSS licensees by tying the milestones to the ITU bring into use date.[11] For example, we could require applicants to demonstrate that they are on a launch manifest at a designated point some months before the ITU bringing into use date. In addition, we could require licensees to also meet the intermediate milestones noted above, that is, enter into a non-contingent contract, complete critical design review and begin physical construction of all satellites within a specified time frame prior to the ITU bringing into use date. We seek comment on what time frames would be appropriate. We seek comment on these or other possible approaches to implementation milestones.[12]

Reporting requirements. We propose a slight modification to § 25.145 of our rules, which governs reporting requirements for FSS systems. FSS licensees are required to file an annual report with the Commission describing: the status of satellite construction and anticipated launch dates, including any major delays or problems encountered; and a detailed description of the use made of each satellite in orbit.[13] Licensees should request an extension of time if they anticipate delays in these schedules. We propose to apply these requirements to NGSO FSS systems. We do not, however, propose to apply a requirement to report unscheduled satellite outages.[14] The outage reporting requirement was a means of spectrum management instituted to ensure that

[9] 47 CFR 25.140(c), 25.142(a)(4), and 25.143(b)(3).

[10] The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, Report and Order, 15 FCC Rcd 16127 (2000) (''2 GHz Report and Order'').

[11] The ITU deadline for putting these U.S. systems into use is May 18, 2003. A two-year extension may be granted under certain circumstances, thus the latest date to bring into use at least one satellite by each of the second round applicants is May 18, 2005.

[12] We plan to undertake an investigation of milestones issues in a separate, broader proceeding, not limited to NGSO FSS service.

[13] 47 CFR 25.210(l)(1) and (3).

[14] 47 CFR 25.210(l)(2).

satellite spectrum resources were not warehoused in orbit. We believe that the operational characteristics of NGSO systems obviate the need for this reporting requirement. One of the second round applicants, @Contact, suggests that applicants be required to file quarterly reporting requirements to enable the Commission to monitor more closely milestone compliance. We request comment on these proposals. We also seek comment on a proposal to require NGSO FSS operators to file affidavits certifying whether milestone requirements are met following the appropriate milestone deadlines.[15] The Commission would retain the right to request additional information (*e.g.*, copies of construction contracts), as required to ensure compliance with milestones. Failure to file a timely certification or disclosure of non-compliance would result in automatic cancellation of an operator's system authorization, with no further action required on the Commission's part.[16] We seek comment on this proposal.

Orbital Debris Mitigation. Currently, the FCC addresses concerns regarding orbital debris of satellite systems on a case-by-case basis. The Commission analyzes such concerns under the general ''public interest, convenience, and necessity,'' standard in the Communications Act. In our 2 GHz Report and Order,[17] we adopted a requirement that applicants for 2 GHz MSS authorizations disclose their orbital debris mitigation plans. Like the Ku-band Notice of Proposed Rulemaking[18] we propose to apply that requirement to NGSO FSS applicants as well, and seek comment on its application to this service. We also intend to commence a separate rulemaking proceeding to consider whether to adopt filing requirements for all FCC-licensed satellite services, including orbital debris mitigation issues, the selection of safe flight profiles and operational configurations, as well as post-mission disposal practices.

System License and License Terms. NGSO systems historically consist of constellations of technically identical satellites that may be launched and retired at different times. Consequently, existing NGSO satellites in other bands and services have been authorized under blanket licenses.[19] Under this approach, licensees are issued a single blanket authorization for the construction, launch and operation of a specified number of technically identical space stations that constitute the satellite network constellation. The authorization covers all construction and launches necessary to implement the complete constellation and to maintain it until the end of the license term, including any replacement satellites necessitated by launch or operational failure, or by retirement of satellites prior to the end of the license period. All replacement satellites, however, must be technically identical to those in service, including the same orbital parameters, and may not cause a net increase in the number of operating satellites. The license terms runs from the date on which the first space station in the system begins transmitting and receiving radio signals, and is valid for 10 years from that point in time. There is a filing window for system replacement applications prior to the expiration of the license that allows sufficient time for the Commission to act upon replacement system applications. We believe it is appropriate to continue using this model of licensing for the NGSO FSS. We propose to require that replacement applications be filed no earlier than three months prior to, and no later than one month after, the end of the eighth year of the existing system license. We request comment on this proposal.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, IB Docket No. 02–19, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or <*bmillin@fcc.gov*>. This NPRM can also be downloaded in Microsoft Word and ASCII formats at <*http://www.fcc.gov/ib*>.

This Notice of Proposed Rulemaking (Notice) seeks comment on proposed options for spectrum sharing among the second round Ka-Band non-geostationary satellite orbit fixed-satellite service (NGSO FSS) applicants. The Commission proposes to license all five of the applicants and seeks comment on which option may best accommodate the applicants. Implementation of these NGSO FSS systems will introduce additional means of providing broadband services to consumers as quickly as possible. This document also seeks comment on our proposals for service rules to apply to NGSO FSS systems.[20] These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the NGSO FSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest and enables the U.S. to preserve its ITU international coordination priority. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to

[15] This requirement currently applies to Big LEO and 2 GHz operators.

[16] *See* 47 CFR 25.161.

[17] *2 GHz Report and Order*, 65 FR 54555, 15 FCC Rcd at 16187–88, Section 135–138.

[18] *Ku-Band NPRM,* Section 66–67.

[19] *See, e.g.*, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to Mobile Satellite Service in the 1610–1626/2483.5–2500 MHz Frequency Bands, *Report and Order*, 66 FR 30361, 9 FCC Rcd 536 (1994).

[20] *See* paragraphs 37–44, supra.

existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public. If commenters believe that the proposed rules discussed in the NPRM require additional RFA analysis, they should include a discussion of this in their comments.

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary satellite orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services ''Not Elsewhere Classified.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts.[21] This Census Bureau category is very broad, and commercial satellite services constitute only a subset of the total number of entities included in the category.

The rules proposed in this Notice apply only to entities providing NGSO FSS. Small businesses will not likely have the financial ability to become NGSO FSS system operators because of the high implementation costs associated with satellite systems and services. Since there is limited spectrum and orbital resources available for assignment, we estimate that only five applicant entities, whose applications are pending, will be authorized by the Commission to provide these services. We expect that none of these would be considered small businesses under the SBA definition. Thus, the rules proposed in this Notice of Proposed Rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**. See 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

[21] 13 C.F.R. 121.201, North American Industry Classification System (NAICS) Code 51334.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sec. 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.145 is amended by removing ''and'' at the end of paragraph (c)(1), by removing the period at the end of paragraph (c)(2) and adding ''; and'' in its place, by removing ''and'' at the end of paragraph (g)(1)(ii), by removing the period at the end of paragraph (g)(1)(iii) and adding ''; and'' in its place, adding paragraphs (c)(3), (g)(1)(iv), (i), (j) and (k) and revising paragraph (f) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(c) * * *

(3) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

* * * * *

(f) *Implementation milestone schedule.* Each NGSO FSS licensee in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands will be required to enter into a non-contingent satellite manufacturing contract for the system within one year or authorization, to complete critical design review within two years of authorization, to begin physical construction of the satellites in the system within two and a half years of grant, and to launch and operate its entire authorized system within six years of authorization.

(g) * * *

(1) * * *

(iv) All operators of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz bands shall, within 10 days after a required implementation milestone as specified in the system authorization, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. Failure to file a timely certification of milestones, or filing disclosure of non-compliance, will result in automatic cancellation of the authorization with no further action required on the Commission's part.

* * * * *

(i) *Financial requirements.* Each NGSO FSS applicant must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to meet the estimated costs of the construction and/or launch and any other initial expenses of all proposed space stations in its system and the estimated operating expenses for one year after the launch of the proposed space station(s). Financial qualifications must be demonstrated in the form specified in §§ 25.140(c) and 25.140(d). In addition, applicants relying on current assets or operating income must submit evidence that those assets are separate and apart from any funding necessary to construct or operate any other licensed satellite system. Failure to make such a showing will result in the dismissal of the application.

(j) *Replacement of space stations within the system license term.* Licensees of NGSO FSS systems in the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands authorized through a blanket license pursuant to paragraph (b) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization; and

(2) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(k) *In-orbit spares.* Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (b) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

[FR Doc. 02–5081 Filed 2–27–02; 4:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–424, MM Docket No. 00–133, RM–9895]

Digital Television Broadcast Service; Portland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments request filed by HMW, Inc, requesting the substitution of DTV 43 for DTV channel 4 at Portland, Maine. DTV Channel 43 can be allotted to Portland, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43–51–06 N. and 70–19–40 W. As requested, we propose to allot DTV Channel 43 to Portland with a power of 750 and a height above average terrain (HAAT) of 265 meters. However, since the community of Portland is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before April 22, 2002, and reply comments on or before May 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Brendan Holland, Shaw Pittman, LLP, 2300 N Street, NW., Washington, DC 20037–1128 (Counsel for HMW, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 00–133, adopted February 25, 2002, and released March 1, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Maine is amended by removing DTV Channel 4 and adding DTV Channel 43 at Portland.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–4980 Filed 3–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 022502A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2–day Council meeting on March 19 and 20, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday and Wednesday, March 19 and 20, 2002. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday.

ADDRESSES: The meeting will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone (860) 572–0731. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 19, 2002

Following introductions, the Council will consider fishing effort capacity reduction proposals for inclusion in draft Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). The Council will consider proposals for modifying permit transfer provisions, reducing latent effort (unused groundfish days-at-sea) and the consolidation of fishing effort. Following this report, the Council will provide time on the agenda for public comments on any issues that are relevant to fisheries management and Council business. The Groundfish Committee will discuss progress on the development of Amendment 13. They will also recommend and possibly approve changes to the groundfish status determination criteria for inclusion in Amendment 13.

Wednesday, March 20, 2002

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A discussion of implementation issues concerning the U.S./ Canada Shared Resources Agreement is then scheduled, followed by a vote on whether to adopt the agreement, the contents of which were presented at the January Council meeting. There will be a discussion of possible future action related to the annual evaluation of whiting management measures. The Council will discuss whether it will complete a

Framework Adjustment to implement alternatives to the year 4 default measures for whiting scheduled to become effective on May 1, 2003. During the Monkfish Committee Report the Council will consider approval of goals and objectives for Amendment 2 to the Monkfish FMP for the purpose of providing a basis for the development of management measures. There also will be an update on a timetable for the amendment and progress to develop management alternatives. The Scallop Committee will provide an overview of alternatives under consideration for inclusion into Draft Amendment 10 to the Atlantic Sea Scallop FMP.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 26, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 02–5099 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 42
Monday, March 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–128–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations to protect endangered species of terrestrial plants.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–128–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–128–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–128–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the importation or exportation of endangered species of terrestrial plants, contact Mr. James Petit de Mange, Inspection Station Coordinator, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–7839. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulation and Forfeiture Procedures.

OMB Number: 0579–0076.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for protecting endangered species of terrestrial plants by regulating the individuals or entities who are engaged in the business of importing, exporting, or reexporting these plants.

To carry out this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355. In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora regulations at 50 CFR 17.12 or 23.23 must obtain a general permit (PPQ form 622). This includes importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. This does not include persons engaged in business merely as carriers or customhouse brokers.

To obtain a general permit, these individuals or entities must complete an application (PPQ form 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the impending importation, exportation, and reexportation of endangered species, marking containers used for the importation, exportation, and reexportation of plants, and creating and maintaining records of importation, exportation, and reexportation.

The information provided by these information gathering activities is critical to our ability to carry out the responsibilities assigned to us by the Endangered Species Act. These responsibilities include the careful monitoring of importation, exportation, and reexportation activities involving endangered species of plants, as well as investigating possible violations of the Endangered Species Act.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.21355 hours per response.

Respondents: U.S. importers, exporters, and reexporters of endangered species.

Estimated annual number of respondents: 1,400.

Estimated annual number of responses per respondent: 11.666.

Estimated annual number of responses: 16,333.

Estimated total annual burden on respondents: 3,488 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–5074 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation; Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995, this Notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request reinstatement of a previously approved information collection in support of the regulations governing Peanut Warehouse Storage Loans and Handler Operations for the 1996–2002 crop of peanuts, as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before May 3, 2002, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Carolyn Hunter, Marketing Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, (202) 690–0013, facsimile (202) 720–9015; or Internet e-mail, Carolyn_Hunter@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peanut Warehouse Storage Loans and Handler Operations.

OMB Control Number: 0560–0014.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: Information relative to reports and recordkeeping regarding peanut handlers and peanut warehouse storage loans, as authorized by the Secretary of Agriculture, is used by the FSA and CCC to monitor and control compliance with the USDA's peanut program, as outlined in 7 CFR Parts 729 and 1446. If this information is not required and then monitored, then the 1996 Act could not be implemented as required by Congress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individual producers and warehouse operators.

Estimated Number of Respondents: 154,800.

Estimated Number of Responses Per Respondents: 376

Estimated Total Annual Burden of Respondents: 54,119.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Carolyn Hunter, at the address listed in the ''Additional Information or Comments'' section, above.

Comments will be summarized and included in the request for OMB approval of information collection. All comments will become a matter of public record.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–5008 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of CCC to request a revision and extension of an information collection approved under an emergency clearance with respect to the Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils ''Standards of Approval of Warehouses.'' The information collection will allow CCC to administer the Honey Storage Agreement as authorized by the CCC Charter Act, 15 U.S.C. 714 *et seq.*

DATES: Comments on this notice must be received on or before May 3, 2002, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Shirlene Engle, USDA, Farm Service Agency, Warehouse and Inventory Division, Storage Contract Branch, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, (202) 720–7398; e-mail *Shirlene—Engle@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Standards for Approval of Warehouses' Reporting and Recordkeeping Requirements.

OMB Control Number: 0560–0216.

Expiration Date: March 31, 2002.

Type of Request: Revision and extension of a currently approved information collection.

Abstract: The information collected under OMB Control Number 0560–0216, as identified above, allows CCC to administer the Honey Storage Agreement authorized by the CCC Charter Act. The information collected allows CCC to contract for warehouse storage and related services and to monitor and enforce all honey provisions of 7 CFR part 1423. The forms approved by this information

collection are furnished to interested warehouse operators or used by warehouse examiners employed by CCC to secure and record information about the warehouse and its operator. The information collected is necessary to provide those charged with executing contracts for CCC a basis upon which to determine whether the warehouse and the warehouse operator meet applicable standards for a contract and to determine compliance once the contract is approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .7 hours per response.

Respondents: Warehouse Operators.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 2,557 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; and (d) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Shirlene Engle at the address listed above. All comments will become a matter of public record.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–5009 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The original meeting of the Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee that had been scheduled for March 7 has been postponed and will now meet on Friday, April 5, 2002, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. During this meeting we will discuss the Forest Supervisor's response to committee advice on noxious weed management, and also participate in a discussion of proposed public involvement for an upcoming forest roads inventory. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 26, 2002.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 02–5083 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, March 8, 2002—9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 62 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of February 8, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Nebraska and New Mexico
VI. Briefing on Bioterrorism and Health Care Disparities
VII. Environmental Protection Agency Documents Hearing
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–5193 Filed 2–28–02; 12:54 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Shipper's Export Declaration (SED) Program.

Form Number(s): 7525–V (paper form), Automated Export System (AES) (automated form).

Agency Approval Number: 0607–0152.

Type of Request: Revision of a currently approved collection.

Burden: 944,188 hours.

Number of Respondents: 200,000.

Avg Hours Per Response: 11 minutes (7525–V), 3 minutes (AES).

Needs and Uses: The Census Bureau requests continued OMB clearance for the paper and electronic forms it uses in the Shipper's Export Declaration (SED) Program. These are the paper Shipper's Export Declaration (SED) 7525–V and its electronic equivalent, the Automated Export System (AES). The paper SED form has recently undergone substantial revisions. However, with this submission the Census Bureau intends to further revise the paper SED form to collect the forwarding agent's Employer Identification Number (EIN) by adding block 5b for ''Forwarding Agent's (IRS) or ID No.''. This change to the paper form will bring it up to date with pending changes in the Census Bureau's Export Regulations contained in 15 CFR, Part 30. These changes are already reflected in the AES. The Census Bureau is revising the electronic AES to meet the requirements for the mandatory AES filing of commodities identified on the Department of Commerce's Commerce Control List (CCL) and the Department of State's U.S. Munitions List (USML). This requirement is mandated by Public Law 106–113, Title XII, ''Security Assistance,'' Subtitle E, ''Proliferation Prevention Enhancement Act of 1999.''

This law requires that the export of items identified on the Department of Commerce, Bureau of Export Administration's (BXA) Commerce Control List (CCL) and the Department of State's United States Munitions List (USML) be reported via AES. The State Department has requested to have additional data items incorporated into the AES in order to accommodate the requirements of the International Traffic in Arms Regulations (ITAR). In meeting these requirements, the Census Bureau is adding the following data elements to the AES record: (1) Office of Defense Trade Controls (ODTC) Registration Number; (2) ODTC Significant Military Equipment (SME) Indicator; (3) ODTC Eligible Party Certification Indicator; (4) ODTC USML Category Code; (5) ODTC Unit of Measure; (6) ODTC Unit of Quantity; (7) ODTC Exemption Number; and (8) ODTC Export License Line Number. These additional data items requested by the State Department will not be incorporated on the paper SED since the items must be filed through AES. The incorporation of these data items into AES will allow for the elimination of the requirement for USPPIs or authorized filing agents to submit paper SEDs to the State Department. All of these revisions are referred to as a ''conditional'' data elements and are not required to be reported for all transactions. These revisions should not affect the average 11 minutes response time for the completion of the Commerce Form 7525–V or the average 3 minutes response time for the completion of the AES record.

The Census Bureau will allow the trade community a grace period of 90 days (September 3, 2002) to deplete their stock of the current SED forms and make revisions to the AES. However, during the grace period the Census Bureau will allow the use of both the old and revised Commerce Form 7525–V. As of September 3, 2002, only the Commerce Form 7525–V, collecting the forwarding agent's EIN will be accepted by the U.S. Customs Service and the Census Bureau. Furthermore, items identified on the CCL or USML, currently requiring a SED must be filed via AES.

The SED form and AES electronic equivalent provide the vehicles for collecting data on U.S. exports. Title 13, United States Code (U.S.C.), Chapter 9, Sections 301–307, mandates the collection of these data. The regulatory provisions for the collection of these data are contained in the Foreign Trade Statistics Regulations, Title 15, Code of Federal Regulations (CFR), Part 30. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals on U.S. International Trade in Goods and Services, a principal economic indicator and primary component of the Gross Domestic Product (GDP). The SED/AES also provides information for export control purposes as mandated under Title 50, U.S.C.. This information is used to detect and prevent the export of high technology items or military goods to unauthorized destinations or end users.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code (U.S.C.), chapter 9, sections 301–307; Title 15, Code of Federal Regulations (CFR), part 30.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5075 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at Urbana-Champaign; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–025. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* QPix Colony Picker with Gridding and Rearraying packages. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* See notice at 67 FR 4393, January 30, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a unique multi-tasking robotic system for picking, gridding and rearraying specific cell colonies with a rapid picking rate of 3500 colonies per hour and very high throughput useful for large scale DNA sequencing projects. The National Institutes of Health advises in its memorandum of December 3, 2001 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–5108 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–004.

Applicant: University of California, Lawrence Berkeley National Laboratory, Procurement 937–200, One Cyclotron Road, Berkeley, CA 94720.

Instrument: Electron Microscope, Model JEM–2010.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study carbon and inorganic nanotubes, nanowires and nanoscale electrical and mechanical devices. It will also be used to measure mechanical properties as the Young modulus, and yield strength and failure modes of single nanotubes.

Application accepted by Commissioner of Customs: February 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–5109 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–835]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Holly Hawkins at (202) 482–0414, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

PRELIMINARY DETERMINATION:

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled carbon steel flat products from Brazil. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed, on September 28, 2001, by Bethlehem Steel Corp.; United States Steel Corporation; LTV Steel Company, Inc.; Steel Dynamics, Inc.; National Steel Corp.; Nucor Corp.; WCI Steel, Inc.; and Weirton Steel Corp.

Case History

We initiated this investigation on October 19, 2001. See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea, 66 FR 54218 (October 26, 2001) (Initiation Notice). Since the initiation, the following events have occurred. On November 2, 2001, we issued a countervailing duty questionnaire to the Government of Brazil (GOB). The GOB identified three producers which exported subject merchandise to the United States during the period of investigation: Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA).

On November 13, 2001, the U.S. International Trade Commission notified the Department of its affirmative determination in the preliminary phase of the investigation. See Letter from the U.S. International Trade Commission to the U.S. Department of Commerce, dated November 20, 2001, stating that the ITC made affirmative determinations in the preliminary phase of the cold-rolled steel investigations. On November 30, 2001, the Department issued a partial extension of the due date for this preliminary determination until January 28, 2001. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 66 FR 63523 (December 7, 2001).

On November 14, 2001, petitioners alleged that countervailable benefits were being provided to cold-rolled producers and exporters during the POI under several additional GOB subsidy programs. On December 11, 2001, the Department decided to examine three of the newly-alleged programs and issued a second questionnaire related to those programs. See Memo to the File from the Team Through Barbara E. Tillman: Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil (December 11, 2001) (Memo to the File). On December 17, 2001, the GOB and CSN, USIMINAS, and COSIPA submitted responses to the Department's first questionnaire. Petitioners provided comments on these responses on December 28, 2001. On December 26, 2001, the GOB and CSN, USIMINAS, and COSIPA responded to the Department's second questionnaire. Petitioners provided comments on these responses on January 3, 2002. On January 17, 2001, we issued a supplemental questionnaire to the GOB. We received responses to this supplemental on February 5, 2002.

On January 18, 2002, we fully extended the deadline for the preliminary determination to February 25, 2002. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 67 FR 3482 (January 24, 2002) (Extension Notice). On January 18, 2002, in response to a request from Ispat Inland, Inc., we added them as a party to this proceeding.

We issued another supplemental questionnaire on February 8, 2002. The response to these questionnaires were submitted on February 22, 2001. We note that, given the timing of this submission, we were unable to analzye it for purposes of this preliminary determination.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this preliminary determination.

Scope Comments

In the Initiation Notice, we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully- or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope

language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act). In addition, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Injury Test

Because Brazil is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure or threaten material injury to a U.S. industry. On November 19, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Brazil of subject merchandise (66 FR 57985). The views of the Commission are contained in the USITC Publication 3471 (November 2001), Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela; Investigation Nos. 701–TA–422–425 (Preliminary) and 731–TA–964–983 (Preliminary).

Alignment with Final Antidumping Duty Determinations

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determinations in the antidumping duty investigations of certain cold-rolled carbon steel flat products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, et al, 66 FR 54198 (October 26, 2001). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the companion antidumping investigations of certain cold-rolled carbon steel flat products.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2000.

Company Histories

USIMINAS

As stated in the Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5536 (February 4, 2000) (Cold-Rolled from Brazil Final), Usinas Siderurgicas de Minas Gerais (''USIMINAS'') was founded in 1956 as a venture between the GOB, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB included SIDERBRAS' operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia Vale do Rio Doce ''CVRD'', a majority government-owned iron ore producer, acquired 15 percent of USIMINAS' common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (the pension fund of the Bank of Brazil) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

In January 1999, a project was implemented for the corporate, financial, equity, and operational restructuring of USIMINAS and COSIPA. The result of this project was the reallocation of assets and liabilities between the two companies. According to the questionnaire responses, one result of this restructuring was a slight change in USIMINAS' shareholdings in COSIPA, to 49.77 percent from 49.8 percent in January 1999. Another result of the restructuring was the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA. These debentures are not redeemable. They are convertible on demand, at a fixed price, in groups of three, to one common (voting) and two preferred shares. As of the end of the POI, USIMINAS had not converted any of these debentures to shareholdings.

One of USIMINAS' minority shareholders is ''CVRD'', one of the world's largest producers of iron ore. CVRD also owns stock in Companhia Siderurgica Nacional (''CSN''). However, CVRD does not exercise direct or indirect control of either USIMINAS or CSN. See ''Cross-Ownership and Attribution of Subsidies'' section below, for a complete analysis of the extent of CVRD's control over USIMINAS and CSN.

COSIPA

Companhia Siderurgica Paulista (''COSIPA'') was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.77 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management, Ltd.; the COSIPA Employee Investment Club; and COSIPA's Pension Fund (FEMCO). See Cold Rolled from Brazil Final, 65 FR at 5544. The President of USIMINAS is a member of COSIPA's administrative council, which operates similarly to a board of directors. As discussed in the history of USIMINAS above, COSIPA and USIMINAS underwent a major corporate restructuring in January, 1999, resulting in the reallocation of assets and liabilities between the two companies and the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA.

CSN

Companhia Siderurgica Nacional (''CSN'') was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao, S.A. (Docenave/CVRD), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN's shareholders during the POI were Vicunha Siderurgia, with 46.48 percent of the voting shares; Previ, with 13.85 percent; Docepar/CVRD (formerly known as Docenave/CVRD), with 10.33 percent; and a consortium of private investors, including Uniao Comercio e Partipacoes, Ltda.; Textilia, S.A.; the CSN Employee Investment Club; and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization. See Cold Rolled from Brazil Final, 65 FR at 5544.

SUBSIDIES VALUATION INFORMATION:

Allocation Period

Section 351.524(d)(2) of the Department's regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

Respondents did not rebut the presumption that the IRS tables should be used. Therefore, we are using the 15–year AUL as reported in the IRS tables to allocate any non-recurring subsidies under investigation which were provided directly to the producers and exporters of the subject merchandise.

Cross-Ownership and Attribution of Subsidies

There are three producers/exporters of the subject merchandise in this investigation: USIMINAS, COSIPA, and CSN. As discussed above, during the POI, USIMINAS owned 49.77 percent of COSIPA. The CVD Regulations, at section 351.525(b)(6)(ii), provide guidance with respect to the attribution of subsidies between or among companies which have cross-ownership. Specifically, with respect to two or more corporations producing the subject merchandise which have cross-ownership, the regulations direct us to attribute the subsidies received by either or both corporations to the products manufactured by both corporations. Further, section 351.525(b)(6)(vi) defines cross-ownership as existing ''between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations through common ownership of two (or more) corporations.'' The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' See Countervailing Duties Final Rule, 63 FR 63548, 65401 (November 25, 1998).

In this investigation, we preliminarily determine that USIMINAS' 49.77 percent ownership interest in COSIPA is sufficient to establish cross-ownership between the two companies because USIMINAS is capable of using or directing the individual assets of COSIPA in essentially the same ways it can use its own assets. In the Cold Rolled from Brazil Final, we found that USIMINAS' 49.8 percent shareholding, given the number and shareholdings of the remaining shareholders, was sufficient to establish cross ownership of the two companies and attribution of the two companies' subsidies to both companies. 65 FR at 5544.

In the instant investigation, we preliminarily determine that USIMINAS' shareholding, at 49.77 percent, together with the COSIPA convertible debentures that USIMINAS holds, are sufficient to establish that USIMINAS effectively held a majority interest in COSIPA during the POI. This satisfies the definition of cross-ownership provided in section 351.525(b)(6)(iv) of the regulations. Therefore, we preliminarily determine that USIMINAS' virtual majority share in COSIPA, and the COSIPA debentures held by USIMINAS that are not redeemable and are convertible to shares in COSIPA, are sufficient to establish cross-ownership between USIMINAS and COSIPA. Thus, we will continue to calculate one subsidy rate for USIMINAS/COSIPA. For all domestic subsidies, we will follow the methodology outlined in section 351.525(b)(6)(ii) of the regulations. In the case of export subsidies for USIMINAS/COSIPA, we will determine the countervailable subsidy by following the methodology outlined in sections 351.525(b)(2) and 351.525(b)(6)(ii) of the regulations.

In the Cold-Rolled from Brazil Final, the Department also examined the ownership of CSN. We note that, in the instant investigation, the same two entities, CVRD and Previ (the pension fund of the Bank of Brasil) that were found to have minority shareholdings in CSN in the Cold-Rolled from Brazil Final, still have minority holdings in both USIMINAS and CSN. 65 FR at 5544. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could, notwithstanding the absence of direct cross-ownership between them, have cross-ownership such that their interests are merged, and one company could have the ability to use or direct the assets of the other through their common investors. Since the Cold-Rolled from Brazil Final, CVRD's common shares in USIMINAS increased from 15.48 percent to 22.99 percent, while its common shares in CSN, through its wholly-owned subsidiary Docepar/CVRD, remained unchanged at 10.33 percent at the end of the POI. For this same period, Previ's holdings of common shares in USIMINAS fell slightly from 15 percent to 14.90 percent, and remained unchanged for its holdings in CSN at 13.85 percent.

As noted in the Cold Rolled from Brazil Final, both USIMINAS and CSN are controlled through shareholders' agreements which require participating shareholders (who together account for more than 50 percent of the shares of the company) to pre-vote issues before the Board of Directors and to vote as a block. 65 FR at 5544. While CVRD and Previ both participate in the CSN shareholders' agreement, and thus exercise considerable influence over the use of CSN's assets, neither CVRD nor Previ participates in the USIMINAS

shareholders' agreement, and therefore, neither is in a position to exercise any appreciable influence (beyond their respective 22.99 and 14.90 percent USIMINAS shareholdings) over the use of USIMINAS' assets. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38741, 38744 (July 19, 1999) (Hot-Rolled from Brazil Final), which noted the Department's verification of USIMINAS' shareholder agreement.

No new information has been submitted on the record of this investigation to indicate any changes in the terms of USIMINAS' shareholders' agreement since the Department's verification in the Hot-Rolled from Brazil Final. Therefore, consistent with our finding in the Cold-Rolled from Brazil Final and the Hot-Rolled from Brazil Final, we preliminarily determine that CVRD's and Previ's shareholdings in both USIMINAS and CSN are not sufficient to establish cross-ownership between those two companies under our regulatory standard. This absence of common majority or significant minority shareholders leads us to preliminarily determine that USIMINAS' and CSN's interests have not merged, i.e., one company is not able to use or direct the individual assets of the other as though the assets were their own. Thus, for the purposes of this preliminary determination, we have calculated a separate countervailing duty rate for CSN.

Equityworthiness

In accordance with section 351.507(a)(1) of the Department's regulations, a government provided equity infusion confers a benefit to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. See also section 771(5)(E)(i) of the Act. In past investigations, we determined that COSIPA was unequityworthy from 1977 through 1989, and 1992 through 1993; USIMINAS was unequityworthy from 1980 through 1988; and CSN was unequityworthy from 1977 through 1992. See Cold-Rolled from Brazil Final, 65 FR at 5545, citing to Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 58 FR 37295, 37297 (July 9, 1993) (Certain Steel Final); Hot-Rolled from Brazil Final, 64 FR at 38746. For purposes of this investigation, no new information or evidence of changed circumstances has been submitted which would cause us to reconsider these findings.

We note that, because the Department determined that it is appropriate to use a 15–year allocation period for non-recurring subsidies, equity infusions provided prior to 1986 no longer provide benefits in the POI. None of the parties have submitted information or argument, nor is there evidence of changed circumstances, which would cause us to reconsider these determinations.

Equity Methodology

Section 351.507(a)(3) of the Department's regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The applicable methodology is described in section 351.507(a)(6) of the regulations, which provides that the Department will treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is equivalent to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

To determine whether a company is uncreditworthy, the Department must examine whether the firm could have obtained long-term loans from conventional commercial sources based on information available at the time of the government-provided loan. See section 351.505(a)(4) of the Department's regulations. In this context, the term ''commercial sources'' refers to bank loans and non-speculative grade bond issues. See section 351.505(a)(2)(ii) of the CVD regulations.

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991–1993; and CSN 1983–1992. See Cold Rolled from Brazil Final, 65 FR at 5546, citing to Certain Steel Final, 58 FR at 37298 and Hot-Rolled from Brazil Final, 64 FR at 38747. No new information or evidence of changed circumstances has been presented in this investigation that would lead us to reconsider these findings.

Discount Rates

From 1984 through 1994, Brazil experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the Certain Steel Final, 58 FR at 37298, the Hot-Rolled from Brazil Final, 64 FR at 38745–38746 and the Cold-Rolled from Brazil Final, 65 FR at 5546, we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian currency discount rate, is to convert the information on non-recurring subsidies provided in Brazilian currency into U.S. dollars. If the date of receipt of the equity infusion was provided, we applied the exchange rate applicable on the day the subsidies were received, or, if that date was unavailable, the average exchange rate in the month the subsidies were received. Then we applied, as the discount rate, a long-term dollar lending rate in Brazil. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with the methodology applied in the Certain Steel Final; Hot-Rolled from Brazil Final; and Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014, 55019, 55023 (October 21, 1997).

As discussed above, we preliminarily determine that USIMINAS, COSIPA, and CSN were uncreditworthy in all the years in which they received equity infusions. Section 351.505 (a)(3)(iii) of the CVD Regulations directs us regarding the calculation of the benchmark interest rate for purposes of calculating the benefits for uncreditworthy companies: to calculate the appropriate rate for uncreditworthy companies, the Department must identify values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, Historical Default Rates of Corporate Bond Issuers, 1920 - 1997 (February 1998). See 19 CFR 351.505(a)(3)(iii). For the probability of default by a creditworthy company, we used the cumulative default rates for Investment Grade bonds as reported by Moody's. We established that this figure represents a weighted average of the cumulative default rates for Aaa to Baa-rated companies. The use of the weighted average is appropriate because the data reported by Moody's for the Caa to C-rated companies are also weighted

averages. For non-recurring subsidies, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 15–year term, since all of the non-recurring subsidies examined were allocated over a 15–year period.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (''Delverde III''), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993). The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

Methodology

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the beginning of the POI, the Department would then continue to countervail the remaining benefits of that subsidy. See Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel, 66 FR 49351 (September 27, 2001).

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership. See id.

Background

Using the approach described above, we have analyzed the information provided by the GOB and USIMINAS, COSIPA, and CSN to determine whether the pre-sale and post-sale entities of each company can be considered the same person. We began our analysis by estimating the point in time where government control of these companies was transferred to private entities as a result of their changes in ownership. As noted in their questionnaire responses, respondents state that since their initial privatization auctions of common shares, USIMINAS, COSIPA, and CSN have operated as independent entities. The Department finds that the information on the record of this investigation supports respondents' statement.

USIMINAS' International Offering Circular, provided in exhibit 28, appendix E of the GOB's December 17, 2001 questionnaire response, reflects USIMINAS' ownership status after its 1991 partial privatizations and before its international public offerings made in 1994. This circular notes, on page 64, that GOB control of USIMINAS had transferred to ''certain shareholders of the Company (including Bozano; Simonsen Centros Comerciais, S.A.; Nippon Usiminas; CIU; Banco Economico, S.A.; and certain other private sector shareholders), which in aggregate have voting power in excess of 50 percent of the voting shares of the Company.'' Furthermore, it states that these shareholders ''agreed to vote together on major corporate governance matters, corporate events and fundamental policies (including mergers, declaration of dividends and issuance of shares).'' Therefore, we preliminarily determine that control of USIMINAS was transferred from the GOB in 1991, after the initial privatization auctions.

As mentioned above in the ''Company Histories'' section, COSIPA was partially privatized by auction in 1993, and control of the company was acquired by a consortium of investors led by USIMINAS, with the GOB retaining a minority of the preferred shares. Based on our finding above that USIMINAS was no longer under the control of the GOB by 1991, we find that COSIPA's partial privatization in 1993, led by a privatized USIMIMAS, is the appropriate point in time to analyze whether COSIPA is the same entity that existed prior to and after its transfer of control to USIMINAS.

We reviewed the GOB's Notice of Conclusion of Privatization Process regarding CSN, which was provided in exhibit 29, appendix G of the GOB's December 17, 2001 questionnaire response. This exhibit reflects the initial ''Auction of Control Shares,'' on April 2, 1993, of 60.13 percent of CSN's capital stock that was acquired by 196 different participants. Only five of these participants acquired more than 5 percent of the capital stock, the largest acquisition being that of Docenave/CVRD, with 9.41 percent. By the end of 1993, the GOB had sold an additional 11.87 percent of CSN's capital stock in an offering to employees, and another 9.92 percent in the public offering noted above, resulting in the sale of 81.92 percent of CSN's capital stock. CSN's Employee's Pension Fund (CBS) controlled 9.2 percent of CSN's shares prior to its privatization. We, therefore, find that the year 1993 is the appropriate point in time to analyze whether CSN is the same business entity that existed before and after its change in ownership.

Continuity of General Business Operations

Although respondents state that there have been numerous changes in the operations of USIMIMAS, COSIPA, and

CSN since their privatizations, respondents have also noted that these changes were made as part of their ongoing operations and business decisions. See USIMINAS', COSIPA's, and CSN's December 17, 2001 questionnaire response at 79. According to respondents, since their privatizations, all of these companies have acquired interests in steel distributors or service centers; have initiated new management techniques or sales strategies; and, have focused on developing new product lines and value-added products. However, respondents add that none of these changes were directly related to their privatizations. Id. at 79.

Continuity of Production Facilities

Respondents note that, since their privatizations, USIMINAS, COSIPA, and CSN have all added and shut down facilities and equipment in order to upgrade their production processes. According to respondents, all the companies have upgraded their blast furnaces in order to increase production capacities; USIMINAS and CSN have also added coating facilities in an effort to expand their product lines. Again, respondents note that these changes were not directly related to their privatizations, but were part of the companies' ongoing and business decisions.

Our review of USIMINAS' production information indicates little change in the quantity and composition of its production following its privatization. The comparative production data provided at pages 4–5 of USIMINAS' 1992–1993 financial statement (exhibit 34 of the GOB's December 17, 2001 response) indicates that USIMINAS' production totals declined slightly, by 1.6 percent, from 1991 to 1992, and that its product mix remained essentially unchanged for this period. In addition, there was only a slight change in its labor productivity ratio of 386 tons/man/year in 1992 (an increase of 3 over 1991). A similar review of COSIPA's 1993 financial statement at pages 5 and 11, indicated that annual production of uncoated flat-rolled steel products remained steady, declining slightly from 2.6 in 1992 to 2.5 million tons in 1993. However, COSIPA's labor productivity ratio in 1993 did increase to 223.9 tons/man/year from 208.6 tons/man/year in 1992. No specific information was provided about CSN's continuity of production facilities made as a result of its change in ownership in 1993.

Continuity of Assets and Liabilities

The privatizations of USIMINAS, COSIPA, and CSN were accomplished through the sale of the GOB's shares to private investors, and did not involve the transfer of any of the corporate assets of the companies in question. According to respondents, the privatizations of these companies involved the purchasing of shares of an ongoing corporation. As a result, the new shareholders of these companies continued to maintain an ownership interest that included both the assets and liabilities of the privatized companies. Therefore, the liabilities and assets of USIMINAS, COSIPA, and CSN remained intact throughout the privatization process. See GOB's December 17, 2001 questionnaire response at 56.

Retention of Personnel

After the privatizations of USIMINAS, COSIPA, and CSN, respondents state that management began to reorganize the personnel of these companies in order to adjust to the private sector and improve production efficiencies. Specifically, USIMINAS revised its sales strategy by establishing closer customer relationships and additional customer services that required a modest increase in its sales staff and a reduction in the number of sales managers. This is supported by information provided at page 9 of USIMINAS' 1992–1993 financial statement, indicating that the number of USIMINAS' hired personnel in 1992 was 2.7 percent below the number of its personnel in 1991. COSIPA also experienced a 16.8 percent reduction in personnel from December 1992 to December 1993, as reflected on page 11 of COSIPA's 1993 financial statement. This period encompasses four months from the time of COSIPA's initial privatization auction in August 1993, in which control was transferred from the GOB to USIMINAS. No specific information was provided about CSN's personnel adjustments made as a result of its change in ownership in 1993.

Summary

Based on the analysis above, we determine that the vast majority of the business aspects of USIMINAS, COSIPA, and CSN remained unchanged by their respective privatizations. All of these companies still operate in a manner similar to that characterizing their operations prior to privatization. As respondents themselves noted, the legal status of these businesses did not change as a result of their privatizations. Instead, the GOB's privatization process involved the purchasing of shares of ongoing corporations that resulted in the transfer of control and ownership, and in the assumption of each company's existing assets and liabilities. Any changes made in the business operations of USIMINAS, COSIPA, and CSN can be attributed to the ongoing operations and business decisions of these companies, as stated by respondents themselves. In addition, the production levels and product mix of each company remained essentially the same after its change in ownership. While there is information that indicates that the management and personnel of these companies may have been altered as a result of their privatizations, on balance, we do not consider these changes to be sufficient to find that USIMINAS, COSIPA, and CSN were different entities after privatization. As respondents themselves have noted, most of the changes were due to ongoing business decisions and were not directly related to privatization itself. Accordingly, our analysis leads us to preliminarily determine USIMINAS, COSIPA, and CSN to be the same entities which benefitted from subsidies bestowed by the GOB prior to their privatizations.

Trading Companies

Section 351.525(c) of the regulations requires that the benefits from subsidies provided to a trading company which exports subject merchandise be cumulated with the benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company, regardless of their affiliation. In its questionnaire response, the GOB indicated that seven trading companies exported cold-rolled steel to the United States during the POI. These trading companies purchased the cold-rolled steel from the producers subject to this investigation. The GOB, however, did not identify by name these trading companies nor did the GOB provide any quantity and value information, explaining that it was unable to determine whether any of the steel products exported by these trading companies to the United States consisted of subject merchandise. We issued supplemental questionnaires to the GOB and USIMINAS, COSIPA, and CSN, and requested that they identify these trading companies and provide the quantity and value of subject merchandise shipped by them during the POI and that they provide information concerning the use by the trading companies of any of the non-company-specific subsidy programs during the POI. This information was provided by the parties on February 22, 2002. We have not had the opportunity to analyze this information for purposes of this preliminary determination, but

we will consider this information for purposes of our final determination.

Programs Preliminarily Determined to be Countervailable

I. Equity Infusions into CSN, USIMINAS, and COSIPA

Petitioners alleged that the GOB provided equity infusions during the following periods: to CSN from 1986 through 1992; to USIMINAS from 1986 through 1988; and to COSIPA from 1986 through 1993. In our past investigations of hot-rolled steel from Brazil and cold-rolled steel from Brazil, we found that the GOB, through SIDERBRAS, provided equity infusions to USIMINAS, CSN and COSIPA. See Hot-Rolled from Brazil Final, 64 FR at 38747, 38748 and Cold-Rolled from Brazil Final, 65 FR at 5546, 5547. For the reasons cited in the last cold-rolled investigation by the Department (see id.), and because none of the parties have provided new information or argument which would lead us to reconsider this determination, we are continuing to find, under section 771(5)(E) of the Act, that equity infusions were provided to CSN from 1986 through 1992, to USIMINAS from 1986 through 1988, and to COSIPA from 1986 through 1993. The equity infusions into CSN in 1992, and into COSIPA in 1992 and 1993, were made through debt-for-equity swaps and are discussed in more detail below.

As in the previous cold-rolled investigation, we will treat the pre–1991 equity infusions as grants given in the year the infusions were received. These equity infusions constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771(5A)(D)(i) of the Act because they were provided specifically to each company. Accordingly, we preliminarily determined that the pre–1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we treat equity infusions into unequityworthy companies as grants given in the year the infusion was received. These infusions are non-recurring subsidies in accordance with section 351.524(c)(1) of the CVD Regulations. Consistent with section 351.524(d)(3)(ii) of the CVD regulations, because USIMINAS, COSIPA and CSN were uncreditworthy in the relevant years (the years the equity infusions were received), we applied an uncreditworthy discount rate, as discussed in the ''Discount Rate'' section above. As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that the three companies continue to benefit from subsidies received prior to their privatizations, and, therefore, the full value of the benefits allocable to the POI from these equity infusions is being used in the calculation of the companies' subsidy rates.

Additionally, we find, as in the last cold-rolled investigation, that the GOB provided debt-for-equity swaps to CSN in 1992 and COSIPA in 1992 and 1993. See Cold-Rolled from Brazil Final, 65 FR at 5547, 5548. Prior to COSIPA's privatization, and on the recommendation of consultants who examined CSN and COSIPA, the GOB made a debt-for-equity swap for CSN in 1992 and two debt-for-equity swaps for COSIPA in 1992 and 1993. We previously examined these swaps and determined that they were not consistent with the usual investment practices of private investors; constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act; and, therefore, conferred benefits to CSN and COSIPA in the amount of each conversion. See id., citing to Hot-Rolled from Brazil Final, 64 FR at 38747, 38748. These debt-for-equity swaps are specific within the meaning of section 771(5A)(D)(i) of the Act because they were limited to CSN and COSIPA. Accordingly, we preliminarily determine that the GOB debt-for-equity swaps provided to CSN in 1992 and COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act. No party has provided any new information or argument which would lead us to reconsider this determination.

Each debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated each debt-for-equity swap as a grant given in the year the swap was made, in accordance with section 351.507(b) of the regulations. Further, these swaps, as equity infusions, are non-recurring in accordance with section 351.524(c)(1) of the regulations. Because CSN and COSIPA were uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the regulations, as discussed in the ''Discount Rates'' section above.

As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that CSN and COSIPA continue to benefit from subsidies received prior to its privatization, and therefore, the full value of the benefits allocable to the POI from these equity infusions and debt-for-equity swaps is being used in the calculation of CSN's and COSIPA's subsidy rate. We summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 11.27 percent ad valorem for USIMINAS/COSIPA. For CSN, we summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 7.44 percent ad valorem for CSN.

II. ''Presumed'' Tax Credit for the Program of Social Integration (PIS) and the Social Contributions of Billings (COFINS) on Inputs Used in Exports

Background

In the new allegations submitted on November 14, 2001, petitioners stated that the GOB provides a ''presumed'' tax credit for PIS and COFINS taxes. Petitioners allege that PIS and COFINS are social welfare charges and, therefore, fall within the Department's definition of a direct tax under section 351.102(b) of the Department's regulations. The remission of direct taxes constitutes a countervailable subsidy under section 351.509(a) of the Department's regulations. However, petitioners alleged that, even if the Department should find these to be indirect taxes, the remission of these taxes through the ''presumed'' tax credit would still confer a countervailable benefit, because the credit is excessive and is not tied to the actual tax incidence of PIS and COFINS taxes paid on inputs consumed in the production of the exported merchandise. On December 11, 2001, the Department initiated on this program to determine whether the ''presumed'' tax credits exceeded the actual incidence of PIS and COFINS taxes. See Memo to the File.

According to the PIS/COFINS tax credit legislation provided by the GOB, this tax credit program was established on December 13, 1996. See PIS/COFINS Credit Legislation in exhibit 3 of the GOB's questionnaire response dated February 5, 2002. The ''presumed'' tax credit rate for PIS and COFINS is 5.37 percent. The GOB has devised a single rule for ''administrative convenience'' in calculating the ''presumed'' tax credit which applies to all industries, and assumes two stages of processing and therefore, two stages of tax incidence of

PIS and COFINS on all inputs consumed in exports.

The GOB states that PIS and COFINS taxes are incident on all domestic sales of goods and services. Each company is responsible for making monthly payments of PIS and COFINS based on the total sales value of its domestic sales of goods and services. Our review of the legislation governing COFINS indicates that these tax proceeds are used for financing the ''Social Insurance Services,'' which are ''intended solely to defray {the} cost of health care and social security and assistance work.'' The goal of the PIS tax program, as reflected in the legislation, is to ''bring about the integration of employees in the life and growth of their companies.'' See PIS and COFINS legislation in exhibit 3 of the GOB's December 26, 2001 questionnaire response. During the POI, PIS and COFINS taxes were calculated at rates of 0.65 percent and 3.0 percent, respectively. The original COFINS rate, as reflected in its tax legislation noted above, was 2.0 percent.

The GOB states that the minimum incidence of PIS and COFINS taxes that can occur on domestic inputs is at 3.65 percent, since each input is produced and purchased at least once, and every good and service sold in Brazil is subject to these taxes. However, the GOB also notes that the incidence of PIS and COFINS can vary from once to more than five times, depending on the complexity of the goods purchased, and the number of distinct stages of production and intermediate producers. The GOB has not undertaken an examination of the PIS and COFINS tax incidence on an industry-specific basis. The GOB states that because ''... the incidence of PIS/COFINS on inputs could vary not only from industry to industry, but also within the industry itself as well as by virtue of the nature of the inputs purchased, the GOB determined that it would be a practical impossibility to determine the actual incidence in every case. Nor was it in any position to check the actual incidence from individual taxpayer claims, as it would in effect have to look at every input and determine how many stages of processing each input had undergone.'' See GOB's February 5, 2002 submission at 14–15. As a result, the GOB adopted a single method for determining the ''presumed'' tax credit of 5.37 percent. Companies can claim the credit of 5.37 percent as part of their regular monthly federal taxes. The credit of 5.37 percent is calculated based on the previous PIS/COFINS rate of 2.65 percent with the presumption that the PIS and COFINS taxes are paid at two stages of production before the final stage of production when the product is then exported. During the POI, CSN, COSIPA, and USIMINAS all applied for and received the PIS/COFINS tax credit.

Our review of the information provided by respondents indicates that the ''presumed'' PIS and COFINS tax credit is applied quarterly against IPI tax payments. To calculate the PIS/COFINS tax credit, a company divides its export revenues, accumulated through the prior month, by its total gross sales revenues for the same period. This export revenue ratio is then multiplied by the company's production costs or total domestically-purchased inputs accumulated over the same period in order to determine the percentage of domestically- purchased inputs used in the production of the export products. This figure is multiplied by the ''presumed'' tax credit rate of 5.37 percent to yield the year-to-date accumulated tax credit. In order to calculate the credit for the current month, the credit used through the prior month is deducted from this accumulated tax credit. CSN stated that, in order to be conservative, they do not claim the total amount of available credit permitted by law. See USIMINAS', COSIPA's, and CSN's February 5, 2002 submission at 9.

The GOB uses the company income tax return and information pertaining to a company's cost of goods sold to track the costs of domestically-purchased inputs which are used in calculating the PIS/COFINS tax credit. According to the GOB, each company maintains a record of the costs of domestic inputs consumed in production. We reviewed the PIS/COFINS tax credit legislation and noted that the calculation of the costs of these domestic inputs is intended to be based on the ''total value of the purchases of raw materials, semi-finished products and packaging materials.'' See exhibit 3 of the GOB's February 5, 2002 questionnaire response.

Analysis

We examined the information provided by the GOB in the PIS and COFINS legislation, as noted above, to determine the manner in which the GOB assesses PIS and COFINS taxes. Article 2 of the COFINS legislation states that ''corporate bodies'' will contribute two percent, ''charged against monthly billings, that is, gross revenue derived from the sale of goods and services of any nature.'' Likewise, Article ''Second'' of the PIS tax law (also found in the PIS and COFINS legislation) provides similar language stating that this tax contribution will be calculated ''on the basis of the invoicing.'' The PIS legislation further defines invoicing under Article ''Third'' to be the gross revenue ''originating from the sale of goods.''

Section 351.102(b) of the Department's regulations defines an indirect tax as a ''sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge.'' As noted in the PIS and COFINS legislation, these taxes are derived from the ''monthly invoicing'' or ''invoicing'' originating from the sale of goods and services. The GOB supported this interpretation by stating that ''PIS and COFINS taxes are, by law, incident on all domestic sales of goods and services sold.'' See GOB's February 5, 2002 questionnaire response at 12. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, and we are treating PIS and COFINS taxes as indirect taxes for purposes of this preliminary determination.

We intend to continue to examine whether PIS and COFINS taxes should be construed as social welfare charges. Pursuant to section 351.102(b) of the Department's regulations, if we determined a tax program to be a social welfare charge, then it would be classified as a direct tax rather than an indirect tax.

The GOB has stated in its response that PIS and COFINS are not social welfare charges, but are normal taxes. According to the GOB, social welfare charges are administered by the agencies responsible for their disbursement. Thus, the Imposto Nacional para Seguridade Social (INSS), the GOB's social security tax, is administered by the National Social Security Institute, whereas the PIS and COFINS taxes are administered by the Secretariat of Federal Revenue. In addition, most Brazilian companies have a special account (denominated ''encargos sociais'') for social welfare charges, such as the social security tax, but PIS and COFINS are not included in this account and are instead accounted for as normal taxes on the companies' accounting books. Id. at 9–10. However, we intend to examine whether the stated purpose of the COFINS legislation in supporting ''health care and social security and assistance work,'' renders this tax a social welfare charge.

Based on our preliminary determination that PIS and COFINS are indirect taxes, we examined how the GOB calculates the ''presumed'' tax credit related to these taxes. The law pertaining to this tax credit, as

mentioned above, states that this tax credit is determined by using ''the total value of the purchases of raw materials, semi-finished products and packaging materials.'' These items fit the description of what the Department normally considers prior-stage inputs. Therefore, we are examining the countervailability of this program under section 351.518(a)(2) of our regulations, which covers the ''Remission of prior-stage cumulative indirect taxes'' upon export. As noted above, these tax credits are calculated using an ''export revenue ratio'' in order to segregate and credit those inputs that were used in respondents' exported products.

In order for the Department to determine whether a benefit exists, we must determine whether the amount remitted exceeds the incidence of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of exports. Generally, the Department will determine the amount of the benefit to be the difference between the amount remitted and the amount of prior-stage cumulative taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. However, to use this measure of the benefit, the Department must be satisfied that certain criteria are met. Thus, section 351.518(a)(4)(i) provides that the Department will consider that the entire amount of the remission confers a benefit unless;

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

Our review of the information on the record of this investigation indicates that, although the GOB does have a system in place for calculating an amount for the ''presumed'' credit due, the system is not effective for calculating the credit corresponding to the ''actual'' inputs consumed in the exports of these companies. As noted above, the GOB stated that a single rule was used for ''administrative convenience'' to determine the rate of the credit. This rule applies to all industries and assumes two stages of production, and therefore, two levels of tax incidence for the PIS and COFINS taxes charged on inputs. However, the GOB was unable to demonstrate how the PIS/COFINS tax credit of 5.37 percent is reflective of the tax incidence incurred by the inputs through the stages of production associated with the steel industry.

Respondents' explanation of how each of the companies calculate the ''presumed'' tax credit for PIS and COFINS states that the export revenue ratio is multiplied by either ''raw material'' costs or ''production costs.'' See USIMINAS', COSIPA's, and CSN's February 5, 2001 submission at 8. Production costs usually include cost elements in addition to prior-stage inputs, such as depreciation, overhead and labor costs. In addition, USIMINAS provided the list of ''raw material'' inputs it uses to calculate this tax credit. This list includes machine parts, which are items that are not normally considered inputs. See e.g., Final Results of Countervailing Duty Review: Ball Bearings and Parts Thereof from Thailand, 62 FR 728, 731 (January 6, 1997). Therefore, we preliminarily determine that the GOB's system used for calculating the amount of this ''presumed'' tax credit, of tracking the appropriate inputs consumed and measuring the actual PIS and COFINS tax incidence, is ineffective.

In section 351.518(a)(4)(ii) of the regulations, additional criteria are to be considered before the Department reaches a determination that the entire amount of the rebate or remission confers a benefit:

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

Neither the GOB nor the companies involved have met the terms of section 351.518(a)(4)(ii) by carrying out an examination of the actual inputs involved, nor of whether the inputs are consumed in production and in what amounts.

As a result, the Department preliminarily finds that the entire amount of this tax credit is countervailable as an export subsidy. For CSN, we have calculated the ad valorem rate in accordance with section 351.525(b)(2) by dividing the total tax credit claimed during the POI by CSN's total export sales during the POI. In calculating a combined rate for USIMINAS/COSIPA, we calculated the benefit by first combining the tax credits claimed by both USIMINAS and COSIPA during the POI, and then dividing this total benefit amount by their combined export sales during the POI. This is consistent with the calculation methodology outlined under section 351.525(b)(6)(ii) for corporations with cross-ownership. On this basis, we determine the net subsidy to be 0.78 percent ad valorem for CSN and 1.31 percent ad valorem for USIMINAS/COSIPA.

Program Preliminarily Determined to be Not Used

Programa de Financiamento as Exportacoes (''PROEX'')

We initiated on this program based on petitioners' allegation that the GOB provided export financing through the Programa de Financiamento as Exportacoes (''PROEX'') at preferential interest rates.

According to the questionnaire responses, PROEX was created by the GOB on June 1, 1991 by Law No. 8187/91 with the purpose of offering Brazilian companies the opportunity to finance exports at rates equivalent to those available on international markets. PROEX is administered by the Comite de Credito as Exportacoes (''the Committee''), with the Ministry of Finance serving as its executive. Day-to-day operations of PROEX are conducted by the Banco do Brasil, the Central Bank of Brazil. There are two components to the PROEX program. ''PROEX Financiamento'' (or PROEX Financing) provides direct financing for a portion of the funds required for the transaction. ''PROEX Equalizacao'' (or PROEX Equalization) permits interest equalization, by which the government covers the difference between the interest rate obtained from a private bank and the prevailing rate in the international market.

According to the GOB and USIMINAS, CSN, and COSIPA, no PROEX funds were disbursed to finance any exports of subject merchandise to the United States during the POI. Therefore, we preliminarily determine that this program was not used during the POI.

Programs for Which Additional Information Is Needed

I. National Bank for Economic and Social Development (''BNDES'') Fund for the Modernization of the Steel Industry

In their submission of November 14, 2001, petitioners alleged that the National Bank for Economic and Social Development (''BNDES'') offers financing for the steel industry through

the Fund for the Modernization of the Steel Industry (Fund). Petitioners alleged that the Fund was specifically created by BNDES, a GOB development bank, to support the development of the Brazilian steel industry after its privatization. Petitioners provided information showing that loans through the Fund were allegedly made by BNDES to the Brazilian steel industry at interest rates below those on comparable commercial loans. On December 11, 2001, we decided to investigate this program. See Memo to the File.

The GOB reported that the Fund for the Modernization of the Steel Industry does not exist. However, based on our review of the questionnaire responses, we found that all of the companies under investigation had outstanding loans from BNDES during the POI and that BNDES operates a number of different financing programs, some of which may provide countervailable benefits. We note that, in the Preliminary Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, the FINAME program, which is administered by BNDES and agent banks throughout Brazil, and provides capital financing to companies located in Brazil, was found to be an import substitution program that provided countervailable benefits to producers and exporters of wire rod. 67 FR 5967, 5972 (February 8, 2002). The FINAME program provides for the leasing of new machinery and equipment to producers in Brazil. Although the GOB reported that the BNDES Fund for the Modernization of the Steel Industry does not exist, we are continuing to investigate BNDES and a number of lending programs that may be offered by BNDES to determine whether they provided countervailable subsidies, during the POI, to producers and exporters of cold-rolled steel from Brazil. We are seeking additional information from the GOB and the companies on BNDES loan programs for purposes of our final determination.

II. Program to Induce Industrial Modernization of the State of Minas Gerais (PROIM)

In their allegations filed on November 14, 2001, petitioners alleged that the state of Minas Gerais provides concessionary project financing through the PROIM program for up to 50 percent of the total investment, with grace periods not to exceed 36 months. On December 11, 2001, we decided to investigate this program because petitioners' arguments and supporting documentation indicated that PROIM may be an import substitution program which finances the use of Minas Gerais-produced raw materials and inputs. See Memo to the File.

According to the questionnaire responses, the PROIM program is a state-administered program that is intended to encourage companies located in the state of Minas Gerais to increase production; of the three respondent companies, only USIMINAS is located in Minas Gerais. PROIM allows for the deferral of state taxes in the state of Minas Gerais. The tax that is deferred is known as the Imposto Sobre Circulacao da Mercadoria e Servicos (tax on the circulation of merchandise and services), or ICMS. ICMS is a value-added tax. Companies located in the state of Minas Gerais must charge 18 percent on sales within the state, 12 percent on sales to outside of the state other than to states in the North and Northeast regions, and 7 percent on sales to states in the North and Northeast regions. Sales for export and sales to the free port of Manaus are exempt from the tax.

The PROIM program provides that companies that increase their production within the state of Minas Gerais may obtain a deferral of that portion of the ICMS which applies to the increased production.

Since there is a deferral of a state tax that is administered by a state government, our specificity analysis must focus on whether the deferral is limited to an enterprise or industry or group thereof located within the state of Minas Gerais. See section 351.502 of the Department's regulations. We are still in the process of gathering additional information concerning use of this program within the state and, therefore, for purposes of this preliminary determination, we are not making a finding with respect to this program.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation. We have preliminarily determined that the total estimated countervailable subsidy rate is 12.58 percent ad valorem for USIMINAS/COSIPA and 8.22 percent ad valorem for CSN. With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates and rates based entirely on facts available. Because none of the companies has a de minimis or zero rate, or a rate based entirely on facts available, we have weight-averaged the companies' rates to calculate an ''all others'' rate of 11.90 percent ad valorem.

Producer/Exporter	Countervailable Subsidy Rate
USIMINAS / COSIPA	12.58%
CSN	8.22%
All Others	11.90%

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Brazil produced or exported by USIMINAS, COSIPA, CSN, or any other company, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination.In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals

who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, unless otherwise informed by the Department, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than five days from the date of filing of the case briefs. An interested party may make an oral presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5104 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–823]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination: With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of certain cold-rolled carbon steel flat products from France. For information on the estimated countervailing duty rates, see section below on ''Suspension of Liquidation.''

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam at (202) 482–0176; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are to our regulations as codified at 19 CFR part 351 (2001).

The Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Co., Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea,* 66 FR 54218 (October 26, 2001) (''*Initiation Notice*'')).

On November 3, 2001, we issued countervailing duty questionnaires to the Government of France (''GOF''), the European Commission (''EC''), and Usinor, a producer/exporter of the subject merchandise from France. Our decision to select Usinor to respond to our questionnaire is explained in the Memorandum to Susan H. Kuhbach, ''Respondent Selection,'' dated November 2, 2001, which is on file in the Central Records Unit, room B–099 of the main Department building.

On November 30, 2001, we extended the time limit for the preliminary determination of this investigation to January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 63523 (December 7, 2001).

On November 15, 2001, Emerson Electric Co. submitted a request to exclude certain merchandise from the scope of this investigation. On February 22, 2002, the petitioners submitted an objection to this request. *See* section below on ''Scope of the Investigation: Scope Comments'' for an analysis of these submissions and the Department's resulting determination.

We received a response to our countervailing duty questionnaire from the EC on December 20, 2001, and from the GOF and Usinor on December 21, 2001. On January 2, 2002, the petitioners submitted comments regarding these questionnaire responses.

We issued supplemental questionnaires to the GOF and Usinor on January 7, 2002, and received responses to these questionnaires on January 16, 2002.

On January 18, 2002, we further extended the time limit for the preliminary determination of this investigation to February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 67 FR 3482 (January 24, 2002).

On January 24, 2002, we requested that Usinor provide its sales values for its French production from 1988 through 2000. *See* Memorandum to File, dated January 24, 2002. Usinor submitted this information on January 29, 2002.

We issued another supplemental questionnaire to Usinor on February 12,

2002, and received a response to this questionnaire on February 15, 2002.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, *see* the Scope Appendix attached to the *Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully-or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of certain cold-rolled carbon steel flat products from France. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (November 19, 2001).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations (*see Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001)). The companion antidumping duty investigations and this countervailing duty investigation were initiated on the same date and have the same scope. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigations of certain cold-rolled carbon steel flat products.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

The period of investigation (''POI'') for which we are measuring subsidies is the calendar year 2000.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Feb. 2, 2000), *reh'g en banc denied,* 2000 U.S. App. LEXIS 15215 (June 20, 2000) (''*Delverde III*''), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.[1] The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' *Id.,* 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the CAFC's decision in *Delverde III,* and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review,* 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as: (1) Continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity

[1] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37225 (July 9, 1993).

under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

In *Final Results of Redetermination Pursuant to Court Remand: GTS Industries S.A.* v. *United States,* No. 00–03–00118 (December 22, 2000) and *Final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al* v. *United States,* No. 99–09–00566 (December 20, 2000), the Department determined that pre-sale Usinor is the same person as respondent Usinor. The following summarizes the analysis performed in these remands, which continues to hold true for this investigation.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called ''Stable Shareholders.''

In analyzing whether the producer of merchandise subject to this investigation is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same ''person'' as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to respondent Usinor, and continue to benefit Usinor during the POI.

1. Continuity of General Business Operations

Usinor produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor since 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively).

This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the period of investigation shows the same three major products being produced by the same three subsidiaries. In 1994 (prior to the privatization), flat products contributed 55 percent of consolidated sales, while stainless and specialty products contributed 20 and 18 percent respectively. In the years following privatization (1995, 1996 and 1997), flat carbon steels continued to contribute 49–53 percent of Usinor's consolidated net sales, while stainless and alloy, and specialty steel accounted for 23–25 percent, and 19–21 percent, respectively.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.,* did it retain the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994. In 1997, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales). The construction industry was the second largest purchaser in both years, accounting for 26 and 23 percent, respectively.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. As is clear from a comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report, steel production facilities have remained intact. The company continued to focus on an ''all steel'' strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same ''person'' that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Act require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from: (1) The petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* Section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Section 782(d) and 782(e) require the Department to inform a respondent if

there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, timely, verifiable, can serve as a reliable basis for reaching our determination, and the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) directs the Department to not decline consideration of the deficient submissions.

In this case, the GOF did not provide the information altogether for the Investment/Operating Subsidies, instead answering our question by stating ''this question is not readily answerable given the multiplicity of programs involved.'' *See* GOF Questionnaire Response, dated December 21, 2001, at II–13. Moreover, in previous proceedings where this same program was investigated, the GOF also failed to provide the same requested information in response to the same question, providing similar answers. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France,* 64 FR 73277, 73282 (December 29, 1999) (''*French Plate*'') and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France*, 64 FR 30774, 30779 (June 8, 1999) (''*French Stainless*''). The relevant pages of the questionnaire responses in those investigations have been placed on the record of this investigation. *See* Memorandum to File, ''Miscellaneous Information'' at Attachment 1 (''Miscellaneous Information Memo''). Thus, the GOF was made aware of the specific information that the Department needed for its analysis on several occasions, yet consistently failed to provide sufficient responses. Thus, pursuant to 782(d) and (e), the Department was left with no alternative but to apply facts available.

The GOF never stated why it was not able to provide the information requested, just that the answers were not ''readily answerable.'' Furthermore, the GOF never requested an extension of time from the Department in which it could follow up with more extensive research and retrieve the information requested. Instead, the GOF basically informed the Department that because the information was not readily answerable, it would not answer our request. Furthermore, the GOF stated that it would provide further documentation at verification, but the Department's regulations state that we do not accept new information at verification. 19 CFR 351.301)(b)(1). Based on the GOF's responses and all of the information available on the record, we, therefore, do not believe the GOF responded to the best of its ability to our questionnaire. Because the GOF did not provide the distribution of benefits for the investment/operating subsidies, the Department is unable to determine the specificity of this program. We therefore find, pursuant to sections 776(a) and (b) of the Act, that the use of adverse facts available in this case is necessary, and subject to this analysis find that the relevant investment/operating subsidy programs were *de facto* specific.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For certain cold-rolled carbon steel flat products, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. We note, however, that the one allocable subsidy received by Usinor, FIS Bonds, has previously been allocated over a company-specific AUL of 14 years. The 14-year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (''*French Certain Steel*'') and was subsequently used to allocate this same subsidy in *French Plate* and *French Stainless*. Because the 14-year AUL was calculated using company-specific information more contemporaneous with the bestowal of the subsidy in question, we have continued to use the 14-year AUL to allocate the benefits of the FIS bonds in this proceeding. *See French Plate*, 64 FR at 73293.

For non-recurring subsidies to Usinor, we applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than being allocated over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel*, we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. No new information has been presented in this investigation to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this investigation, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this investigation.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditworthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa-to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). *See* Miscellaneous Information Memo at Attachment 2. For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to

enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the International Monetary Fund. *See* Miscellaneous Information Memo at Attachment 3. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on the average, short-term interest rate in France as reported in the *International Financial Statistics*, as published by the International Monetary Fund (*See* Miscellaneous Information Memo at Attachment 4). Usinor did not report a company-specific short term interest rate.

I. Programs Preliminarily Determined to Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sidérurgique (''FIS''), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS bonds into equity as countervailable equity infusions. *See French Certain Steel*, 58 FR at 37307; *French Plate*, 64 FR at 73282; *French Stainless*, 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France*, 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we determine that a countervailable benefit exists in the amount of the equity infusions in accordance with section 771(5)(E)(i) of the Act. In this investigation, because the 1986 conversion has already been fully allocated over the AUL prior to the POI, only the 1988 equity infusions continue to provide a benefit in the POI.

We have treated the 1988 equity infusion as a non-recurring subsidy pursuant to 19 CFR 351.507(c). Because Usinor was uncreditworthy in 1988 (see section above on ''Subsidies Valuation Information: Equityworthiness and Creditworthiness''), we used an uncreditworthy discount rate to allocate the benefit of the equity infusion.

In *French Plate*, we attributed separately to Usinor and GTS Industries S.A. (''GTS'') their relative portions of the benefits from the equity infusion. 64 FR at 73282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination. To calculate the benefit attributable to GTS, we first divided GTS's sales in 1995 (the year prior to which Usinor ownership fell below 50 percent) by Usinor's consolidated sales of French produced merchandise in 1995. We then multiplied this ratio by Usinor's percentage ownership in GTS in 1996. The resulting percentage was multiplied by the total 1988 equity infusion to determine the benefit to GTS. The remaining amount of the equity infusion was attributed to Usinor.

Dividing the allocated benefit to Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI, we preliminarily determine Usinor's net subsidy rate for this program to be 1.13 percent *ad valorem*.

B. Investment/Operating Subsidies

During the period 1987 through the POI, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community (''ECSC''). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Plate* and *French Stainless*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See* 64 FR at 73282; 64 FR at 30779 and 30782. Therefore, consistent with these previous cases, we have not investigated these programs in this proceeding.

For the remaining programs, the GOF did not answer our questions regarding the distribution of funds, stating instead that, in the GOF's view, these ''question[s are] not readily answerable given the multiplicity of programs involved.'' As noted earlier, the GOF never why it would not be possible to provide the requested information. It also never asked the Department for an extension of time in which it could successfully research and retrieve the requested information. Instead, the GOF basically informed the Department that because the information was not ''readily answerable,'' it would not answer our request. We, therefore, do not believe that the GOF acted to the best of its ability when it refused to provide the requested information.

Accordingly, the Department has drawn an adverse inference (as done in *French Plate*, 64 FR at 73282 and *French Stainless*, 64 FR at 30779) by concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act. *See* section above on ''Use of Facts Available.''

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit as described in 771(5)(E)(i). Accordingly, we find this program to be countervailable.

The investment and operating subsidies provided in years prior to 1999 were already determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year and expensed in the relevant year of receipt (*see French Plate*, 64 FR at 73283 and *French Stainless*, 64 FR at 30780). Therefore, because it is not possible for these subsidies to benefit Usinor in the POI, we have not further examined them. The amount of investment and operating subsidies in 1999 was also less than 0.5 percent of Usinor's sales of French-produced merchandise in 1999. Therefore, this benefit was also expensed in the years of receipt (1999), in accordance with 19 CFR 351.524(b)(2).

To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we preliminarily determine Usinor's net subsidy rate for this program to be 0.19 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Shareholder Advances After 1986

According to Usinor's 1991 financial statements, the funds in the shareholder advances account were the funds provided by the GOF under the Societes de Developpement Industriel (''SODI'') program. Because we preliminarily find the funds received under the SODI program to not be countervailable (see discussion below), these advances are likewise not countervailable. However, at verification, we intend to examine the source of the funds in the shareholder advances account to determine if these funds are indeed SODI funds.

B. GOF Advances for SODIs

In *French Certain Steel*, we investigated advances made to SODIs prior to 1991 and found them not countervailable. 58 FR at 37310–11. In *French Plate*, we initiated an investigation of SODI advances after 1991. 64 FR at 73295. The information submitted by the petitioners in French Plate in support of investigating the advances to SODIs after 1991 was 1) an apparent discrepancy between the funding received from the GOF by Usinor and the funds ultimately loaned out by Usinor to the SODIs, and 2) the notification of the SODI program by the EU to the WTO. In *French Plate*, we did not make a final determination as to this program's countervailability because the allegation was not initiated upon in time to solicit adequate, verified information from all of the necessary respondents. *Id.*

In response to our questionnaires in this proceeding, Usinor has provided the amounts it received from the GOF and the amounts Usinor loaned to the SODIs. While the amounts received from the GOF do not match exactly the amounts loaned out by Usinor in any given year, over the entire period in which Usinor was receiving funds from the GOF, it did loan out all the funds it received from the GOF. Therefore, after 1991, the program continued to operate as it did prior to 1991. Consequently, for the reasons articulated in *French Certain Steel,* we preliminarily determine that the post-1991 SODI advances do not confer a countervailable subsidy on Usinor.

Moreover, a notification of a program to the WTO is not, in and of itself, a sufficient basis to find the program countervailable. In this respect, we note, but do not rely on, Article 25.7 of the Agreement on Subsidies and Countervailing Measures, which states that notification of a measure does not prejudge either the measure's legal status or the nature of the measure. Thus, while notification of a program to the WTO may have warranted investigation of the measure, based on our investigation of the program, we have found that it is not a countervailable subsidy.

In the petition, the petitioners have alleged that the GOF funds were compensation for SODI expenses, and raised questions about the recording of SODI funds in Usinor's accounting records, whether and how repayments of loaned funds by the SODIs to Usinor were made, whether and how repayments of SODI advances by Usinor to the GOF were made, and Usinor's handling of any surplus funds. We intend to seek further information regarding these issues for our final determination.

C. Funding for Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric arc furnaces. The first disbursal of funds occurred on July 22, 1998, and the second on August 31, 1999.

We preliminarily find that this program provides a financial contribution because it is a direct transfer of funds, as described in section 771(5)(D)(i) of the Act. Regarding specificity, the GOF stated that, in 1997, FF 2 billion of assistance was provided to 190 projects under the general Grands Projects Innovants (''GPI'') program, and that only three of the 39 projects selected in 1997 were in the raw materials sector (the sector that includes steel).

We preliminarily determine that the information reported by the GOF does not provide a basis for finding benefits under this program to be non-specific. First, Usinor's project was approved in 1996. However, the data provided by the GOF addresses 1997. Second, there is no information regarding the amount of benefits received by the companies in the raw material sector. Stating that it does not collect such information, the GOF did not provide the Department with any information indicating the actual distribution of benefits by company or by industry.

Regarding the benefit provided by this assistance, Usinor states that the amount of the advances is so small that any benefit would be virtually immeasurable.

Based upon our review of the amounts, we agree with Usinor that if we treated the disbursements as grants in the year they were received, the benefits would be expensed prior to the POI. Alternatively, if we treated the reimbursable advances as short-term, zero interest contingent liabilities, consistent with 19 CFR 351.505(d)(i), the benefit to Usinor in the POI is 0.00 percent *ad valorem*. Therefore, we find no countervailable subsidy under this program.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program. Should Usinor receive additional funding under this program in the future, we will re-examine the program's countervailability at that time.

D. Funding for Myosotis Project

Since 1988, Usinor has been developing a continuous thin-strip casting process, called ''Myosotis,'' in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist in this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maitrise de L'énergie (''AFME''), entered into three agreements with Usinor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments, one in 1989, one in 1991, and one in 1993. The second agreement, between Ugine and the AFME, covered the cost of some equipment for the project. This second agreement resulted in two disbursements to Ugine from the AFME, one in 1991 and one in 1992. The third agreement, with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance was due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Plate* and *French Stainless,* we found these grants and advances to be countervailable. 64 FR at 73283 and 64 FR at 30780. However, the grants under the 1989 and 1991 agreements were found to be less than 0.5 percent of sales in the year of receipt and, therefore, expensed in the year of receipt. *Id.* Therefore, because it is not possible for these grants to benefit Usinor in the POI, we have not examined them further. The 1997 advance, however, was treated as a short-term interest-free loan in *French Plate* and *French Stainless. Id.*

The 1995 agreement for the reimbursable advance was made between the GOF and Ugine (a Usinor subsidiary which does not produce subject merchandise). However, in its supplemental questionnaire response, Usinor acknowledged that the technology being developed with these funds would also benefit carbon steel flat products (which includes subject merchandise). See Usinor Supplemental Questionnaire Response, dated January 16, 2002, at 12. Consequently, we have analyzed these reimbursable grants in this investigation.

We preliminarily find the reimbursable advance is a financial contribution, as described in section 771(5)(D)(i) of the Act. Regarding specificity, for the reasons described above regarding assistance for Usinor's development of an electric arc furnace, the information provided by the GOF does not provide a basis for finding this program non-specific. Regarding the benefit of the Myosotis assistance, Usinor has argued that the amount of the reimbursable advances is so small that any possible benefit would be immeasurable.

We agree with Usinor. If we treat the entire amount of the reimbursable advance received in 1997 as a grant in that year, the benefit would be less than 0.5% of total sales in that year, and would, thus, be expensed prior to the POI.

Alternatively, we could measure the benefit by treating a portion of the reimbursable advance as a grant and the remainder as a zero-interest contingent liability. According to Article 7a of the Myosotis Agreement (*see* GOF December 21, 2001 Questionnaire Response, at Exhibit 10, p. 5), and as stated above, Usinor was required to reimburse a portion of the advance on July 31, 1999 and the remainder on July 31, 2001. Article 7a additionally states that ''[t]he portion of the advance which may not have been reimbursed pursuant to [this agreement] shall acquire the status of a subsidy. [T]he Beneficiary shall retain possession of this amount.'' Usinor has stated that it made only one payment thus far, in September 2001 (after the POI).

In light of this, the amount that was due on July 31, 1999, could be viewed as a grant received at the time the repayment was due. Dividing this grant by Usinor's sales in 1999, the benefit is less than 0.5 percent of sales in 1999, and, hence, would be expensed prior to the POI. The amount that was due on July 31, 2001, however, pursuant to 19 CFR 351.505(d)(1), and consistent with *French Plate*, is being treated as a short-term, zero-interest contingent liability loan.

Treating the portion to be reimbursed on July 31, 2001, as a zero-interest contingent liability, we multiplied the amount outstanding by the short-term interest rate described in the section above ''Subsidies Valuation Information: Benchmarks for Loans and Discount Rates.'' Since Usinor would have been required to make an interest payment on a comparable commercial loan during the POI, we calculated the benefit as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, the benefit to Usinor in the POI is 0.00 percent *ad valorem*. Therefore, we find no countervailable subsidy under this program.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program. Should Usinor receive additional funding under this program in the future, we will re-examine the program's countervailability at that time.

E. ECSC Article 56 Funding

According to the petitioners, ECSC Article 56 funds are targeted to promote employment and economic revitalization in regions of declining steel activity. Both steel-related and non-steel-related industries are eligible for assistance. Conversion loans are provided at reduced rates of interest and may be granted directly to companies or as global loans to financial institutions which then issue sub-loans to individual companies. Borrowers may also qualify for interest subsidies on all or part of a conversion loan, contingent upon the geographic location of the recipient or on the recipient agreeing that some percentage of the new jobs created will be reserved primarily for unemployed steel workers.

The EC states that Usinor did not benefit from this program because it merely acts as a conduit in advancing ECSC Article 56 funds to SODIs which, in turn, re-loan the funds to small- and medium-sized businesses.

We preliminarily find that, because Usinor was acting only as a conduit for Article 56(2)(a) funds for the benefit of third-party companies, Usinor receives no benefit under this program and, hence, no countervailable subsidy.

However, it is not clear at this stage how Usinor handles the repayment of loan funds from loan recipients (*i.e.,* what are the repayment terms, what does Usinor do with the repaid funds, and what are the repayment terms with the government). We intend to seek further information regarding these issues for our final determination.

F. 1995 Capital Increase

The petitioners have alleged that, by authorizing a capital increase of FF 5 billion at the time of Usinor's 1995 privatization, the GOF conferred a benefit upon Usinor in the amount of the increased capital. Specifically, they argue that the GOF ''directed or entrusted'' private entities to infuse capital into Usinor.

As an initial matter, we note that the arguments set forth by the petitioners may constitute a subsidy allegation made in untimely manner. According to 19 CFR 351.301(d)(4)(i)(A) of the Department's regulations, a subsidy allegation in an investigation is due no later than 40 days before the scheduled date of the preliminary determination. The record shows that the first instance on which the petitioners presented this particular argument was a submission dated February 19, 2002, merely seven days before the scheduled date of the preliminary determination (February 25, 2001). We note that their allegation does not rely on any new information developed in the course of this investigation. Nor did the alleged changes in the Department's practice occur after the filing of the petition. Nevertheless, in light of the obligation under section 775 of the Act to investigate potential subsidies discovered in the course of an investigation, we have reviewed the evidence on the record of this proceeding regarding the new shares issued by Usinor in connection with its privatization.

The capital increase identified by the petitioners was previously examined in *French Stainless* and *French Plate.* In those proceedings, we determined that the GOF did not forego any revenue by authorizing this capital increase. 64 FR at 30787. We also stated that we did not reach the issue of whether private investors were ''entrusted'' to provide a subsidy because we found that no subsidy existed. *Id.* Therefore, we found that no countervailable subsidy was conferred by this capital increase.

The petitioners in this proceeding have asked the Department to analyze this capital increase again based on their allegation that Usinor was unequityworthy at the time of the capital increase. The petitioners also point to developments in the Department's practice since *French Stainless* and *French Plate*, the Department's treatment of committed investments, and 19 CFR 351.507(a)(4)(i) and (ii).

Regarding the petitioners' claim that Usinor was unequityworthy in 1995, the petitioners have cited the company's poor performance in the years proceeding the privatization. Under 19 CFR 351.507(a)(4)(i)(B), we consider past indicators of performance, but we also consider, under 19 CFR 351.507(a)(4)(i)(D), equity investments by private investors. Given that 75 percent of Usinor's shares previously owned by the government were purchased by private investors in the 1995 privatization, we believe that investment in the company was consistent with the practice of private investors (*see* section 771(5)(E)(i) of the Act).

Regarding the petitioners' reference to changes in the Department's practice, we do not believe the two precedents cited by the petitioners (*Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review*, 66 FR 14549 (March 13, 2001) and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 37007 (July 16, 2001)) lead us to view this transaction differently. As noted above, we found no revenue forgone as a result of this capital increase. Also, because Usinor was equityworthy at the time, private investors have not been entrusted or directed to provide a subsidy. Finally, 19 CFR 351.507(a)(4)(ii) addresses situations where a government did not preform a study prior to an investment. In this instance, the investors are private entities.

Based on the above, we preliminarily do not find this allegation to be a basis for finding a subsidy.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. Repayable Grant to Sollac for ''Pre-Coating'' Technology

Usinor claims that, while Sollac was approved for funding under this program, no funds have yet been disbursed. Therefore, there is no benefit during the POI.

B. Tax Subsidies Under Article 39

C. ESF Grants

While the Department normally treats benefits from worker training programs to be recurring (*see* 19 CFR 351.524(c)(1)), we have found in several cases that European Social Fund (''ESF'') grants relate to specific, individual projects that require separate approval. *See, e.g., French Stainless* at 30781.

Usinor records ESF benefits as investment/operating subsidies. Because we find, for 1999, that these subsidies were less than 0.5 percent of Usinor's total sales of French produced merchandise in 1999, any benefits in 1999 would have been expensed in 1999. In addition, for the POI, Usinor claims it did not receive any benefits under the ESF program.

D. ECSC Article 54 Loans

E. ERDF Funding

F. Funding Under Resider and Resider II

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net subsidy rate (percent)
Usinor	1.32
All Others	1.32

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A), we have set the ''all others'' rate as Usinor's rate, because it is the only company which was individually investigated.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from France for exports which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and

will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5105 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817]

Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers or exporters of certain cold-rolled carbon steel flat products from Argentina.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Jarrod Goldfeder at (202) 482–0176 or (202) 482–0189, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Determination

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are to our regulations as codified at 19 CFR part 351 (2001).

The Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Co., Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001) (''*Initiation Notice*'')).

On November 2, 2001, we issued a countervailing duty questionnaire to the Government of Argentina (''GOA'') and Siderar Sociedad Anonima Industrial Y Comercial (''Siderar''), a producer/exporter of the subject merchandise from Argentina. Our decision to select Siderar to respond to our questionnaire is explained in the Memorandum to Susan H. Kuhbach, ''Respondent Selection,'' dated November 2, 2001, which is on file in the Central Records Unit, room B–099 of the main Department building.

On November 30, 2001, we extended the time limit for the preliminary determination of this investigation to January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001).

On November 15, 2001, Emerson Electric Co. submitted a request to exclude certain merchandise from the scope of this investigation. On February 22, 2002, the petitioners submitted an objection to this request. *See* section below on ''Scope of the Investigation: Scope Comments'' for an analysis of these submissions and the Department's determination.

We received a questionnaire response from the GOA and Siderar on December 21, 2001. The petitioners submitted comments regarding these questionnaire responses on January 2, 2002.

We issued supplemental questionnaires to the GOA and Siderar on January 22, 2002, and received responses to these questionnaires on February 6, 2002.

On January 18, 2002, we further extended the time limit for the preliminary determination in this investigation until February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 67 FR 3482 (January 24, 2002).

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, see the Appendix to this notice.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully- or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

Injury Test

Because Argentina is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding that there is a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of certain cold-rolled carbon steel flat products from Argentina. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden,*

Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations (*see Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001)). The companion antidumping duty investigations and this countervailing duty investigation were initiated on the same date and have the same scope. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigations of certain cold-rolled carbon steel flat products.

Period of Investigation

The period of investigation (''POI'') for which we are measuring subsidies corresponds to Siderar's fiscal year, July 1, 2000 through June 30, 2001.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For certain cold-rolled carbon steel flat products, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Siderar has calculated a company-specific AUL of 8 years. We preliminarily determine that this AUL is not distortive and that it is significantly different from the 15-year AUL prescribed by the IRS Tables. Therefore, we are using this AUL to identify those subsidies that potentially give rise to a countervailable benefit during the POI.

We note that subsidies to Siderar's predecessors (Sociedad Mixta Siderugica (SOMISA) and Propulsora Siderugica S.A.I.C (Propulsora)) were previously allocated over 15 years. *See Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Results of Countervailing Duty Administrative Review,* 62 FR 52974 (October 10, 1997). We note further that subsidies to Siderar were allocated over 15 years in *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 37007 (July 16, 2001). In both cases, to allocate subsidies, the Department used the 15-year AUL prescribed by the IRS Tables. At the time of the former case, however, it was not the Department's policy to permit companies to request a company-specific allocation period; and the latter case was decided on the basis of adverse facts available.

Because the 8-year company-specific AUL calculated by Siderar was calculated pursuant to 19 CFR 351.524(d)(iii)) and is significantly different from the AUL prescribed by the IRS Tables (as defined in 19 CFR 351.524(d)(ii)), the Departments regulation at 19 CFR 351.524(d)(i) directs that we use it. The use of this 8-year company-specific AUL means that all benefits received prior to Siderar's 1993 fiscal year provided no benefit to Siderar in the POI. Accordingly, in this preliminary determination, we have not discussed the merits of any arguments relating to any alleged subsidies received prior Siderar's 1993/1994 fiscal year.

Equityworthiness and Creditworthiness

The petitioners claim that SOMISA was unequityworthy from 1984 through 1990. In the *Initiation Notice,* we stated that we would examine the equityworthiness of SOMISA during this period should we find any countervailable equity infusions received in those years. 66 FR at 54226. However, because of the use of Siderar's 8-year, company-specific AUL, any non-recurring subsidies received in the years of alleged unequityworthiness would be fully allocated prior to the POI. Accordingly, because Siderar would not benefit in the POI from any equity infusions received in 1986 through 1990, there is no need to examine its equityworthiness for the that period.

The petitioners also alleged that Siderar was uncreditworthy during 1992. We stated in the *Initiation Notice* that we would examine Siderar's creditworthiness in 1992 if we found that SOMISA received any non-recurring grants, loans, or loan guarantees in 1992. *Id.* However, because of our decision to use Siderar's 8-year, company-specific AUL, any non-recurring subsidies received in 1992 would be fully allocated prior to the POI. In addition, no countervailable loans or loan guarantees were received in 1992. Accordingly, because Siderar did not benefit in the POI from any countervailable non-recurring grants, loans or loan guarantees received in 1992, there is no need to examine its creditworthiness for that year.

I. Programs Preliminarily Determined To Be Countervailable

A. Zero Tariff Turnkey Bill

The Zero Tariff Turnkey Bill is a program established by Resolution 502/95 of the Ministry of Economy. The purpose of the program is to provide an incentive to import goods and equipment that will be used to modernize productive processes in Argentina. The program achieves this objective by allowing for the importation of new merchandise and equipment without the payment of import duties. Resolution 502/95 was repealed in 2000 and replaced with a modified version established by Resolution 1089/00.

In the original questionnaire and in a supplemental questionnaire, we asked the GOA to provide information regarding the distribution of benefits among industries and companies for the year the benefit was approved and for the prior three years. The GOA provided us in both responses with what appears to be the distribution of benefits for the years 1996/1997 only. Although this information indicates that the program is not specific, the GOA did not claim that it could not provide more recent data. Therefore, because it is unclear at this stage whether the provided data provided by the GOA is the relevant data, for specificity purposes, we have preliminarily made an assumption that the benefits are *de facto* specific. We intend to clarify prior to the final determination the specificity of this program during the POI. We note, however, that, despite this assumption of specificity, the benefits from the program to Siderar for the POI are

insignificant, amounting to only 0.01 percent *ad valorem.*

Because this program provides a duty exemption, we have preliminarily found the benefit as recurring, pursuant to 19 CFR 351.524(a) and (c). Prior to the final determination, we intend to clarify whether these benefits are tied to capital assets and consider whether they should be treated as non-recurring.

To calculate the subsidy rate, we multiplied the value of the imported goods by the applicable duty rate. Because this entire amount was rebated, we treated the entire amount as a benefit in the POI. We divided this benefit by Siderar's total sales in the POI. Accordingly, we preliminarily determine Siderar's POI benefit from this program to be 0.01 percent *ad valorem.*

II. Programs Preliminarily Determined To Be Not Countervailable

A. ''Committed Investment'' Into APSA

According to the petitioners, at the time of APSA's privatization in 1992, the GOA required all bidders to commit to invest $100 million in equity into APSA during the two years following the company's sale. The petitioners allege that the GOA sold APSA at a price that was below fair market value, thereby inducing Propulsura, the eventual purchaser, to agree to the investment commitment. The petitioners argue that the investment commitment constituted an indirect equity infusion in which the GOA ''directed or entrusted'' Propulsura to make an infusion in APSA, an unequityworthy company. The petitioners suggest two ways to address the committed investment required by the GOA: 1) as revenue forgone and 2) as an equity infusion ''directed'' by the GOA.

Regarding the first approach, the petitioners rely upon the Department's finding in *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review,* 66 FR 14549 (March 13, 2001) and accompanying *Issues and Decision Memorandum,* at Discussion of Analysis of Programs: Committed Investment (''*Mexican Plate*''). In *Mexican Plate,* we found that the government of Mexico forwent revenue owed to it when it allowed the bidders to use a commitment to invest in the company in the future as a partial equivalent to the payment of cash for the company at the time of sale.

In *Mexican Plate,* the benefit occurred at the time that revenue was forgone by the government, *i.e.,* at the time the company was sold. In this case, any revenue forgone from the committed investment would have taken place at the time of the sale of the company, which was in 1992. As stated above, however, because of the use of Siderar's 8-year company-specific AUL in this investigation, any benefits received in 1992 would be fully allocated prior to the POI. Therefore, we have not made a determination of whether the GOA actually forwent revenue because, regardless of whether it did, Siderar did not benefit in the POI.

The second approach advocated by the petitioners is based on our treatment of the committed investment in *Argentina Hot-Rolled.* In that case, we treated the same committed investment that is under investigation in this case as non-recurring grants received in the years in which the investments were made. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 109901, 10997 (February 21, 2001). That decision, however, was made on the basis of adverse facts available, and the methodology used in that case for the treatment of the committed investment reflected an adverse inference by the Department.

We believe that the revenue forgone analysis performed in *Mexican Plate* is the appropriate examination to be used in the case of committed investments. However, because the petitioners have, in part, relied on *Argentina Hot-Rolled* in making their allegations, we have examined the merits of this allegation in light of *Argentina Hot-Rolled.* We note several problems with the petitioners' second approach. First, unlike in *Argentina Hot-Rolled,* the GOA and Siderar have cooperated fully in this investigation and, therefore, our determination in *Argentina Hot-Rolled* is not instructive. Second, an examination of the evidence placed on the record of this investigation in light of the approach used in *Argentina Hot-Rolled* reveals significant issues with regard to the specificity of any benefits and the nature of the financial contribution. Finally, even assuming *arguendo* that these investments were countervailable, the resulting subsidy rate would be small enough that it does not raise the overall subsidy rate above *de minimis.* As a result, because the countervailability of this program does not make a difference in the outcome of this preliminary determination, we find that no further examination of this approach is needed. *Based on all of the above, we find this program not countervailable.*

B. Export Subsidies: Reintegro

The Reintegro program entitles Argentine exporters to a rebate of various internal and domestic taxes levied during the production, distribution, and sales process on many exported products. The Reintegro is calculated as a percentage of the FOB invoice price of an exported product. *See, e.g., Final Affirmative Countervailing Duty Determination: Honey from Argentina,* 66 FR 50613 (October 4, 2001), and accompanying *Issues and Decision Memorandum* at ''Programs Determined to Confer Subsidies: Federal Programs—Argentine Internal Tax Reimbursement/Rebate (Reintegro)'' (''*Honey Final*'').

In order to determine whether a countervailable benefit is provided by programs that rebate cumulative indirect taxes, the Department normally examines whether the amount remitted or rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs consumed in the production of subject merchandise, making normal allowances for waste. 19 CFR 351.518(a)(2). If the amount rebated exceeds the amount of prior-stage cumulative indirect taxes paid, the excess amount is a countervailable benefit. *Id.*

However, 19 CFR 351.518(a)(4) states that the Department will consider the entire amount of the tax rebate or remission to confer a benefit unless:

> 1. The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or
>
> 2. If the government in question does not have a system or procedures in place, if the system is or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

19 CFR 351.518 (a)(4)(i) and (ii).

According to the GOA, the government has no written procedures or guidelines for the operation of this rebate system. However, the GOA claims that it does receive information from the industry regarding the actual incidence of indirect taxes, which it takes into account in setting the

Reintegro rate. These rates are adjusted from time to time at the discretion of the Ministry of Economy.

The Department has previously examined the Reembolso, the predecessor to the Reintegro. In the most recent examination, *Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination on Honey from the People's Republic of China,* 66 FR 14521, 14524 (March 13, 2001), we stated that:

> [T]he GOA established a rebate system in 1971, which was known as the ''reembolso'' program. In 1986, Decree 1555/86 was promulgated to implement the reembolso program in a manner consistent with the General Agreement on Tariffs and Trade. In May 1991, the GOA issued Decree 1011/91, which renamed the reembolso program as Reintegro and modified the legal structure of the program. Under Decree 1011/91, Reintegro rebated indirect taxes only. Decree 1011/91 has been the relevant governing decree since 1991. The nature and structure of the program have remained unchanged since then, although the Ministry of Economics modifies Reintegro rebate levels from time to time.

Moreover, in *Preliminary Results of Full Sunset Review, Carbon Steel Wire Rod From Argentina,* 64 FR 28978 (May 28, 1999), we stated that:

> [W]e found that the legal structure of the reembolso program was changed by Decree 1011/91 in May 1991. Specifically, the Department found that the rebate system was changed to cover only the reimbursements of the indirect local taxes and does not cover import duties, except reimbursement of duties paid on imported products which are re-exported.

In *Honey Final,* we found that the Reintegro program provides a countervailable benefit in the full amount of the Reintgro rebate because the GOA was unable to demonstrate that it had a reasonable and effective system in place for its honey industry. However, while this was true for the honey industry, because systems or procedures may differ from industry to industry, we have examined the system or procedure in place for the steel industry.

In previous steel cases, the Department determined that, for the steel industry, the GOA carries out an appropriate examination of actual inputs to confirm which inputs are consumed in the production of the exported products. *See, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 49 FR 18006, 18009–10 (April 26, 1984) (and its subsequent reviews) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Oil Country Tubular Goods From Argentina,* 49 FR 46564, 46566 (November 27, 1984) (and its subsequent reviews).

In this case, Siderar claims that it submits its tax incidence study to the GOA on a regular basis (and provided to the Department, in this investigation, its studies for the fiscal years 1998/1999 and 2000/2001). Because the GOA has used these studies in its determination of the Reintgro rate (which are similar to the studies examined by the GOA in previous cases) and regularly updates these rates, we continue to find, consistent with our past cases, that the GOA has appropriately examined the actual inputs involved in the production of the subject merchandise.

Because of the above, and pursuant to 19 CFR 351.518(a)(2), we then examined the extent to which Siderar received rebates in excess of its prior-stage cumulative indirect taxes on the production of subject merchandise. According to the GOA, the Reintgro rate applicable for subject merchandise for the POI was 7.5 percent (except for a brief period in which it was reduced to 0.5 percent). Based on our calculation methodology from previous cases, we examined Siderar's 2000/2001 tax incidence study and found that the company's actual POI prior-stage cumulative indirect taxes for the production of the subject merchandise exceeded 7.5 percent. Because Siderar's actual incidence of tax was higher than the Reintegro rate, we find no countervailable benefit to Siderar in the POI. Accordingly, we preliminarily find this program not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses and/or the use of Siderar's 8-year company-specific AUL, we determine that Siderar did not receive benefits under the following programs during the POI:

A. Equity Infusions

B. Assumption of Debt and Liquidation Costs

C. Subsidies Under Decree 1144/92

D. Export Subsidies: Pre- and Post-Export Financing

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary

version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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APPENDIX

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold- rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

Chemical Composition

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

Chemical Composition

Element	C	Si	Mn	P	S
Weight %	0.90-1.05	0.15-0.35	0.30-0.50	≤0.03	≤0.006

Mechanical Properties

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥475 Vickers hardness number

Physical Properties

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

Non-metallic Inclusion

	Area Percentage
Sulfide Inclusion	≤0.04 %
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

Surface Roughness

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤0.100 mm ±7%
  Width: 100 to 600 mm

Chemical Composition

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2-0.5	≤0.05	≤0.05	≤0.07	Balance

Mechanical Properties

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

Physical Properties

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm.

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inch ±.0015 inch
  Width: 33 to 45.5 inches

Chemical Composition

Element.....	C	Mn	P	S	Si	Al
Min. Weight %.....					0.65	
Max. Weight %.....	0.004	0.4	0.09	0.009		0.4

Mechanical Properties

Hardness.....	B 60-75 (AIM 65)

Physical Properties

Finish.....	Smooth (30-60 microinches)
Gamma Crown (in 5 inches).....	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I-UNIT max
Coating.....	C3A-.08A max. (A2 coating acceptable)
Camber (in any 10 feet).....	1/16 inch
Coil Size I.D.	20 inches

Magnetic Properties

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max
Permeability (1.5T/60 Hz) NAAS.....	1700 gauss/oersted typical
	1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
  Thickness: 0.025 to 0.245 mm
  Width: 381-1000 mm

Chemical Composition

Element.....	C	N	Al
Weight %.....	<0.01	0.004 to 0.007	<0.007

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

Chemical Composition

Element.....	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %...	0.02	0.20				0.03				0.003
Max. Weight %..	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

Surface Finish

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

- Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/-10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000-55,000 psi
Elongation	minimum of 15 percent in 2 inches

- Concast cold-rolled drawing quality sheet steel, ASTM a-620-97, Type B, or single reduced black plate, ASTM A-625-92, Type D, T-1, ASTM A-625-76 and ASTM A-366-96, T1-T2-T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
- Certain single reduced black plate, meeting ASTM A-625-98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T-2 (49-57 hardness using the Rockwell 30 T scale).
- Certain single reduced black plate, meeting ASTM A-625-76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
- Certain single reduced black plate, meeting ASTM A-625-98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T-3 (53-61 hardness using the Rockwell 30 T scale).
- Certain cold-rolled black plate bare steel strip, meeting ASTM A-625 specifications, which meet the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50-60 aiming
Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

- Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A-623, Table II, Type MR specifications, which meet the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

Physical and Mechanical Properties

Thickness	0.0060 inch (±0.0005 inch)
Width	10 inches (+ ¼ to ⅜ inch/-0)
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

- Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
- Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:
  Thickness (nominal): ≤0.019 inch
  Width: 35 to 60 inches

Chemical Composition

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

- Certain cold-rolled steel, which meets the following characteristics:
  Width: >66 inches

Chemical Composition

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

Physical and Mechanical Properties

Thickness Range (mm)	0.800-2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

Chemical Composition

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

- Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

Physical and Mechanical Properties

Thickness Range (mm)	1.000-2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000-1.199 thickness range) 25 (if 1.200-1.599 thickness range)

	26 (if 1.600-1.999 thickness range) 27 (if 2.000-2.300 thickness range)

Variety 2

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

Physical and Mechanical Properties

Thickness Range (mm)	1.000-2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000-1.199 thickness range) 22 (if 1.200-1.599 thickness range) 23 (if 1.600-1.999 thickness range) 24 (if 2.000-2.300 thickness range)

Variety 3

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

Physical and Mechanical Properties

Thickness Range (mm)	1.200-2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200-1.599 thickness range) 19 (if 1.600-1.999 thickness range) 20 (if 2.000-2.300 thickness range)

- Certain cold-rolled steel, which meets the following characteristics:

Variety 1 :

Chemical Composition

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

Physical and Mechanical Properties

Thickness Range (mm)	0.600-0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2 :

Chemical Composition

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

Physical and Mechanical Properties

Thickness Range (mm)	0.800-1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3 :

Chemical Composition

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15-.35	0.35	0.10	0.10	0.30

Physical and Mechanical Properties

Thickness (mm):	0.7
Elongation %: ≥	35

- Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A-424-96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings:

7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 02–5106 Filed 3–1–02; 8:45 am]
BILLING CODE 3510–DS–C

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–849]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl at (202) 482–1767 and Darla Brown at (202) 482–2849, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

PRELIMINARY DETERMINATION The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cold-rolled carbon steel flat products (subject merchandise) from the Republic of Korea. For information on the estimated countervailing duty rates, *see* the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC, LTV Steel Company, Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp (collectively, petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001) (*Initiation Notice*)), the following events have occurred. On November 1, 2001, we issued countervailing duty questionnaires to the Government of Korea (GOK).[1] On December 20, 2001, we received responses to our initial questionnaires from the GOK, Dongbu Steel Co., Ltd. (Dongbu), Hyundai Hysco (Hysco), and Pohang Iron & Steel Co., Ltd.[2] (POSCO) (collectively, respondents), the producers/exporters of the subject merchandise. On January 16, 2002, the Department initiated an investigation of two additional subsidy allegations made by petitioners. *See* Memorandum to Melissa G. Skinner, Director of Office of AD/CVD Enforcement VI, through Richard Herring, Program Manager of Office of AD/CVD Enforcement VI; Re: Additional Subsidy Allegations in the Investigation of Certain Cold-Rolled Steel Flat Products from Korea dated January 16, 2002, which is on public file in the Central Records Unit (CRU), Room B–099 of the Department of Commerce. Supplemental questionnaires were issued to the GOK, Dongbu, POSCO, and Hysco on January 16, 2002 and January 18, 2002. We received supplemental questionnaire responses from respondents on February 5, 2002.

On December 7, 2001, we issued a partial extension of the due date for this preliminary determination from December 22, 2001, to no later than January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001) (*Extension Notice*). On January 24, 2002, we amended the Extension Notice to take the full amount of time to issue this preliminary determination. The extended due date is February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 67 FR 3482 (*Second Extension Notice*).

The GOK's December 20, 2001 questionnaire response stated that Union Steel Manufacturing Co., Ltd. (Union) shipped subject merchandise to the United States during the POI; however, the GOK stated that Union would not be responding to the Department's questionnaire for this investigation. On January 16, 2002, we provided Union with another opportunity to respond to the questionnaire. Union, again, declined to participate in this investigation. For the treatment of Union in this preliminary determination, see the ''Use of Facts Available'' section of this notice.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrent with this preliminary determination.

Scope Comments

In the Initiation Notice, we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully-or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

[1] Upon the issuance of the questionnaire, we informed the GOK that it was the government's responsibility to forward the questionnaires to all producers/exporters that shipped subject merchandise to the United States during the period of investigation.

[2] Pohang Coated Steel Co., Ltd. (POCOS), a wholly-owned subsidiary of POSCO which also produces and exports subject merchandise submitted a questionnnaire response. Because POCOS is a whollyu-owned subsidiary of POSCO, we have included the beneifts received by POCOS in our calculation of POSCO's rate and have used POSCO's consolidated sales as our denominator. Reference to POSCO throughout this notice will also include POCOS.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Injury Test

Because Korea is a ''Subsidy Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure or threaten material injury to a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of subject merchandise. (66 FR 57985). The views of the Commission are contained in the USITC Publication 3471 (November 2001), *Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*; Investigation Nos. 701–TA–422–425 (Preliminary) and 731–TA–964–983 (Preliminary).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping duty investigations of cold-rolled carbon steel flat products.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2000.

Use of Facts Available

Union failed to respond to the Department's questionnaire. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act require the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Union failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Union failed to provide any requested information, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. In this investigation, the Department requested that all producers/exporters in Korea that shipped subject merchandise to the United States during the POI submit the information requested in our initial questionnaire. However, Union, a producer/exporter that shipped subject merchandise to the United States during the POI, did not participate in the investigation.

The Department finds that by not providing the necessary information specifically requested by the Department and by failing to participate in any respect in this investigation, Union has failed to cooperate to the best of its ability. Therefore, in selecting facts available, the Department determines that an adverse inference is warranted.

Section 776(b) of the Act indicates that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. *See* also 19 CFR § 351.308(c). As adverse facts available in this preliminary determination, we have calculated Union's net subsidy rate by using a subsidy rate from *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999), (*Sheet and Strip*), this rate was used as adverse facts available for a company in that final determination. Therefore, we preliminarily determine a total *ad valorem* rate of 7.00 percent as adverse facts available for Union. *See Sheet and Strip*, 64 FR 30638–39. We note that, in determining Union's adverse facts available rate, we did not include in our calculations any net subsidy rates stemming from programs that would not be available to Union. For example, there was a higher adverse facts available rate that was used in *Sheet and Strip*, however, a portion of that rate was based upon company-specific allegations, unique to a specific producer. We further note that none of the company-specific program rates used to derive the 7.00 percent net subsidy rate were determined on the basis of facts available.

Subsidies Valuation Information

Allocation Period: Under section 351.524(d)(2) of the CVD Regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, we will allocate non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-Terms Loans and Discount Rates: During the POI, respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. Some loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea,* and in *Structural Beams,* the Department determined that, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37338, 37339 (July 9, 1993) (*Steel Products from Korea*), and *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea,* 65 FR 41051

(July 3, 2000) (*Structural Beams*). In both investigations, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the preliminary determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530 (March 31, 1999) (*Plate in Coils*), *Sheet and Strip,* and in the Benchmark Interest Rates and Discount Rates section of the Issues and Decision Memorandum that accompanied *Structural Beams,* we examined the GOK's direction of credit policies for the period 1992 through 1998. Based on information gathered during the course of those investigations, the Department also determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1998. In the current investigation, based upon these earlier findings and updated information, we preliminarily determine that the GOK still exercised substantial control over lending institutions in Korea during the POI.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained since 1992, and which are still outstanding during the POI:

(1) For countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average foreign-denominated interest rates on the companies' loans from foreign bank branches in Korea. If such a benchmark was not available, then, as facts available, we had to rely on the lending rates as reported by the IMF's *International Financial Statistics Yearbook.* We will attempted to gather additional data on lending rate during verification.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' won denominated public and private bonds. We note that this benchmark is based on the decision in *Plate in Coils,* 64 FR 15530, 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year won-denominated corporate bonds as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils,* 64 FR 15530, 15532, in which we determined that, absent company-specific interest rate information, the won-denominated corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea.

We are also using, where available, the company-specific won-denominated corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 2000. Where unavailable, we are using the national average of the three-year Korean won corporate bond rate.

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term won-denominated interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POI.

Treatment of Subsidies Received by Trading Companies: We required responses from trading companies with respect to the export subsidies under investigation because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. *See* 19 CFR 351.525.

During the POI, Dongbu exported the subject merchandise to the United States through one trading company, Dongbu Corporation (Dongbu Corp). POSCO exported subject merchandise through two trading companies, Daewoo International Corporation (Daewoo) and POSCO Steel Service & Sales Co., Ltd. (Posteel). Dongbu Corp, Daewoo, and Posteel responded to the Department's questionnaires with respect to the export subsidies under investigation.

Under 19 CFR 351.107, when subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This preliminary determination is based on two main facts: first, the majority of subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon individual trading companies with regard to subject merchandise is insignificant. Thus, combination rates would serve no practical purpose because the calculated subsidy rate for any of the producers and a combination of any of the trading companies would effectively be the same rate. Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the trading companies, we calculated the benefit attributable to the subject merchandise. In each case, we determined the benefit received by the trading companies for each of the export subsidies, next we weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States to the relative share of direct exports of the producer of subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

I. Programs Preliminarily Determined To Be Countervailable

A. GOK Directed Credit

We determined in *Plate in Coils* that the provision of long-term loans via the GOK's direction of credit policies was specific to the Korean steel industry through 1991 within the meaning of section 771(5A)(D)(iii) of the Act, and resulted in a financial contribution, within the meaning of sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively.

In *Plate in Coils,* the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. In *CTL Plate,* the Department continued to find that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. In the final determination of *CTL Plate,* the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998. *See CTL Plate,* 64 FR at 73180. Further, the Department determined in this investigation that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act. In *1999 Sheet and Strip,* we determined that the GOK continued to control credit through 1999. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*). Based upon the determinations in these cited cases, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable. In addition, we also continue to find access to offshore lending and credit sources countervailable.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies in 2000, the POI, which we would consider along with our finding in the prior investigations. We note that with respect to access to direct foreign loans (*i.e.,* loans from offshore banks) and the issuance of offshore foreign securities by Korean companies, the GOK has replaced the Foreign Investment and Foreign Capital Inducement Act, with the Foreign Investment Promotion Act. While this information indicates that the GOK is making strides in its reforms of the financial sector, at present, this additional information is not sufficient to warrant a reconsideration of our determination that the GOK has directed access to foreign credit to the Korean steel industry. During verification, we will closely examine this issue with respect to the 2000 period.

With respect to foreign sources of credit, in *Plate in Coils* and *Sheet and Strip,* we determined that access to foreign currency loans from Korean branches of foreign banks (*i.e.,* branches of U.S. and foreign-owned banks operating in Korea) did not confer a benefit to the recipient as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by the respondent from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in *Plate in Coils* and *Sheet and Strip,* we determined that respondent's loans from these banks could serve as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. As such, lending from this source is not countervailable, and, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

Dongbu, Hysco, and POSCO received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the POI. In order to determine whether these GOK-directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the ''Subsidies Valuation Information'' section of this notice.

For variable-rate loans the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, in these preliminary results, we have calculated the benefit from these loans using the Department's variable rate methodology. For fixed-rate loans, we calculated the benefit from these loans using the Department's fixed-rate methodology. Next we summed the benefit amounts from the loans and divided the total benefit by the respective company's total f.o.b. sales value during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.20 percent *ad valorem* for Dongbu, 0.24 percent *ad valorem* for Hysco, and 0.08 percent *ad valorem* for POSCO.

B. GOK Infrastructure Investment at Kwangyang Bay Through 1991

In *Steel Products from Korea,* the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea,* 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea,* which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. Using the 15 year allocation period, POSCO is still receiving benefits under this program from GOK investments made during the years 1986 through 1991. To calculate the benefit from these grants, we used as our discount rate the three-year corporate bond rate on the secondary market as used in *Steel Products from Korea.* We then summed the benefits received by POSCO during the POI from each of the GOK's yearly investments over the period 1986–1991. We then divided the total benefit attributable to the POI by POSCO's total f.o.b. sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.15 percent *ad valorem* for the POI.

C. Research and Development (R&D)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the Industrial Development Act (IDA), including technology for core materials, components, engineering systems, and resource technology. Petitioners also allege that R&D grants are provided to the steel industry through the Ministry of Science and Technology (MOST).

The IDA is designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) A company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of Small and Medium Enterprises (SME)'s established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount. In *CTL Plate,* we determined that this program is countervailable. *See CTL Plate,* 64 FR 73185. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine that this program is countervailable.

To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the amount of the grant by each company's respective total f.o.b. sales. Based upon this methodology, we preliminarily determine that POSCO received a countervailable subsidy of 0.08 percent ad valorem and that Dongbu received a countervailable subsidy of less than 0.005 percent ad valorem. Hysco did not use this program.

D. Provision of Land at Asan Bay

The GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by Koland.

In *CTL Plate,* we found that steel companies received price discounts on purchases of land at Asan Bay, and found this program countervailable. *See CTL Plate,* 64 FR 73184. In addition, we found that the GOK provided additional savings to the companies by exempting them from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land. Dongbu purchased land in the Kodai industrial estate at Asan Bay and received the tax exemptions on the purchase of this land at the industrial estate.

To determine Dongbu's benefit from this program, we compared the GOK's published list price for land at the Kodai industrial estate, which was 134,966 won per square meter, to the discounted price per square meter paid by Dongbu. We adjusted the list price to account for land development costs undertaken by the company, rather than the GOK. We made this deduction because the GOK's costs for land development is included in the published 134,966 per square meter price. We then calculated this price discount by the number of square meters purchased by Dongbu. In addition to this price discount, the GOK provided an adjustment to Dongbu's final payment to account for ''interest earned'' by the company for pre-payments. Companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. The GOK provided a financial contribution to Dongbu under section 771(5)(D)(i) of the Act when it refunded the interest earned on the advanced payments. This interest earned refund is specific to Dongbu under section 771(5A)(D)(iii)(I) of the Act, as being limited to Dongbu. Therefore, we find that this additional credit on the final payment made by the GOK to Dongbu also provides a countervailable benefit to the company. The land price discount and the interest earned refund are non-recurring subsidies.

Under section 351.524(b)(2) of the CVD Regulations, non-recurring benefits which are less than 0.5 percent of the company's relevant sales are expensed in the year of receipt. We performed the 0.5 percent test and we preliminarily find that the land price discount and the interest earned refund exceeded 0.5 percent of the sales for the respective year, therefore, to calculate the benefit conferred during the POI on the land price discount and the interest earned refund, we applied the Department's standard grant methodology and allocated the benefit provided by this program over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. We then divided the total benefit attributable to the POI by Dongbu's total f.o.b. sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.62 percent *ad valorem* for the POI.

With respect to the exemptions from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land, we preliminarily determine that Dongbu did not receive a benefit from these tax exemptions during the POI. We make this determination because these tax exemptions were not received during the POI. Under section 351.509(b) of the CVD Regulations, the Department will normally consider that the benefit from a tax exemption is conferred in the year in which the exemption was received. We recognize that under certain circumstances, if a tax exemption is tied to capital goods, then the Department may consider the benefit from the tax exemption to be non-recurring. *See Countervailing Duties; Final Rule,* 63 FR 65384, 65393 (November 25, 1998). Non-recurring benefits are normally allocated over time. However, under section 351.524(b)(2), non-recurring subsidy benefits will be expensed in the year of receipt, if the total benefit from the subsidy program is less than 0.5 percent of a company's sales. Therefore, even if the tax exemptions received by Dongbu were considered to have provided non-recurring benefits because they were tied to the purchase of capital assets, these benefits would still have

been expensed before the POI because of the Department's 0.5 percent test.

E. POSCO's Exemption of Bond Requirement for Port Use at Asan Bay

As noted above, the GOK has developed industrial estates at Asan Bay. In *CTL Plate,* we determined that the GOK had built port berths #1, #2, #3, and #4 in the Poseung area. In September 1997, POSCO signed a three-year lease agreement with the Inchon Port Authority (IPA) for the exclusive use of port berth #1, which was constructed by the GOK. The GOK also entered into a lease agreement in 1997 for the exclusive use of port berths #2, #3, and #4, with a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1.

In *CTL Plate,* we found this program countervailable, see *CTL Plate,* 64 FR 73183–73184. We determined that the waiver of the bond purchase was only provided to POSCO, and was therefore specific under section 771(5A)(D) of the Act. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO conferred a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determined that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to find this program countervailable.

To determine the benefit from this program, we treated the amount of the bond waived as a long-term interest-free loan. We then applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations for a long-term fixed rate loan, and compared the amount of interest that should have been paid during the POI on the interest free loan to the amount of interest that would have been paid based upon the interest rate on a comparable won-denominated benchmark loan. We then divided the benefit by the company's total sales. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO.

F. Investment Tax Credits

Under Korean tax laws, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the Tax Reduction and Exemption Control Act (TERCL). On that date TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

During the POI, Dongbu earned or used the following tax credits for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA Article 11, previously TERCL Article 10); (2) Investments in Productivity Increasing Facilities (RSTA Article 24, previously TERCL Article 25); (3) Investments in Specific Facilities (RSTA Article 25, previously TERCL Article 26); and (4) Equipment Investment to Promote Worker's Welfare (RSTA Article 94, previously TERCL Article 88).

POSCO used the following tax credits during the POI for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA 11); (2) Investments in Productivity Increasing Facilities (RSTA 24); and (3) Investments in Specific Facilities (RSTA 25).

Hysco had outstanding investment tax credits during the POI. However, due to the net tax loss for the income tax return filed during the POI, the company could not use and did not claim any investment tax credits during the POI.

If a company invested in foreign-produced facilities (*i.e.,* facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.,* facilities produced in Korea), it received a 10 percent tax credit. Under the tax credit for Equipment Investment to Promote Worker's Welfare, a tax credit could only be claimed if a company used domestic machines and materials. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act in *CTL Plate.* In addition, because the GOK forwent the collection of tax revenue otherwise due under this program, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable in *CTL Plate. See CTL Plate* at 73182.

According to the response of the GOK, changes have been made in the manner in which these investment tax credits are determined. Pursuant to amendments made to TERCL which occurred on April 10, 1998, the distinction between investments in domestic and imported goods was eliminated for the tax credits for Investments in Equipment to Develop Technology and Manpower (RSTA 11), Investments in Productivity Increasing Facilities (RSTA 24), and Investments in Specific Facilities (RSTA 25). According to the response of the GOK, prior to April 10, 1998, the tax credit for these investments was ten percent for domestic-made facilities and three percent for foreign-made facilities. However, for investments made after April 10, 1998, there is no difference between domestic-made and foreign-made facilities. The current tax credit is five percent for all of these investments.

Because the distinction between investments in domestic and foreign-made goods was eliminated for investments made after April 10, 1998, we preliminarily determine that the tax credits received pursuant to these investment programs for investments made after April 10, 1998 to no longer be countervailable. However, companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998 amendment to the tax law. In addition, the tax credits for Equipment Investment to Promote Workers' Welfare (RSTA 94) is still only available for companies using domestic machines and materials. Therefore, we continue to find the use of investment tax credits earned on Equipment Investment to Promote Workers' Welfare countervailable. We also continue to find countervailable the use of investment tax credits earned on investments made before April 10, 1998, under the other three investment tax programs.

According to the response of Dongbu, the tax credits earned for Investments in Equipment to Develop Technology and Manpower, Investments in Productivity Increasing Facilities, and Investments in

Specific Facilities were not based on a tax credit differential between purchasing domestic facilities and imported facilities. In addition, according to the company's response, the tax credit earned during the POI for Equipment Investment to Promote Workers' Welfare was not used to reduce taxes payable during the POI because the entire tax credit was carried forward to future years. The tax return provided in the company's response shows that the entire tax credit was, indeed, carried forward and was not used during the POI. Therefore, we preliminarily determine that Dongbu did not benefit from this program during the POI.

POSCO did use investment tax credits under this program that originated from tax credits earned based upon the differential between purchasing domestic facilities and imported facilities. To calculate the benefit from these investment tax credits, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1999 fiscal year income tax return, which was filed during the POI. We first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.14 percent *ad valorem* for POSCO.

G. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu also had an outstanding balance in this reserve during the POI.

In *Sheet and Strip,* 64 FR 30636, 30645, we determined that this program constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determined that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, as filed during the POI, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. *See* 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for Dongbu and Dongbu Corp by their respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the ''Subsidies Valuation'' section of this notice, we calculated a benefit for Dongbu Corp attributed to Dongbu. On this basis, we preliminarily calculated a countervailable subsidy of 0.07 percent *ad valorem* for Dongbu.

H. Reserve for Overseas Market Development Under TERCL Article 17

Article 17 of the TERCL allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning, from the reserve to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate income tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. This program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu and Posteel, a trading company used by POSCO, also had outstanding balances in this reserve during the POI.

In *Sheet and Strip,* 64 FR 30636, 30645, we determined that this program constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program under Article 16 of the TERCL. We used as our benchmark interest rate each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Section'' above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the ''Subsidies Valuation'' section of this notice, we calculated a benefit attributable to each respective producer. On this basis, we preliminarily calculated a countervailable subsidy of 0.02 percent *ad valorem* for Dongbu and a

countervailable subsidy of 0.02 percent *ad valorem* POSCO.

I. Asset Revaluation Under Article 56(2) of the TERCL

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. In *CTL Plate,* we found this program countervailable. *See, CTL Plate,* 64 FR 73176, 73183. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. To calculate the benefit under this program, we used the additional depreciation in the tax return filed during the POI, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit for each company by their respective total sales. On this basis, we preliminarily determine a net countervailable subsidy of 0.04 percent *ad valorem* for POSCO. Hysco received no benefit from this program because it had a net tax loss. Dongbu did not use this program.

J. Tax Reserve for Balanced Development Under TERCL Article 41/ RSTA Article 58

TERCL Article 41 allowed a company who planned to relocate its facility from a large city to a local area to establish a reserve equal to 15 percent of the facility's value. The balance in the reserve was not subject to corporate income tax in that year but all monies in the reserve must eventually be returned to the income account and are then subject to tax at the expiration of the grace period. The reserve amount equivalent to the amount incurred from the relocation of its facilities from the large city to a local area will be included in taxable income after a two-year grace period and over a three-year period. If the reserve amount is not used for the payment of relocation, this unused amount is included in the company's taxable income, after the two-year grace period. This program was replaced by Article 58 of RSTA. Subsequent to the establishment of Article 58 of RSTA, the program was terminated and the last date that this reserve could be established was August 31, 1999. Dongbu was the only company which established a reserve under this program before the program's August 31, 1999 termination. Dongbu still had an outstanding balance under this reserve during the POI.

We preliminary determine that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. Because the deferral of taxes owed provided under this program amounts to an interest-free loan equal to the company's tax savings, we also preliminarily determine that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefit conferred by this program to Dongbu, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See 351.509 of the CVD Regulations. Accordingly, to determine the benefit, we multiplied the amount of tax savings by Dongbu's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. We then divided the benefit by the company's total sales. On this basis, we preliminarily calculated a countervailable subsidy of 0.02 *ad valorem* for Dongbu.

For our final determination, we will consider whether the methodology the Department has traditionally applied to these types of Korean tax programs accurately quantifies the benefit conferred by these tax reserves. As noted above, the Department has treated these tax reserve programs as providing a deferral of tax liability. That is, in Year X a company places funds into a reserve account and these funds are, therefore, not taxed in Year X. However, three years later when the funds in the tax reserve are returned to taxable income, then income taxes are paid on these funds in Year X plus three. Therefore, we have considered the tax savings on these funds to benefit the company in the form of an interest-free loan. However, if the company is in a tax loss situation and does not pay any taxes on income in the year in which the funds are refunded to the income account the funds placed into the tax reserve are never taxed. Under this scenario, the company, instead of being provided with a deferral of tax liability on these reserve funds, may have been provided with a complete exemption of tax liability on these funds. Therefore, we will carefully analyze this methodological issue for the final determination. We also invite interested parties to comment on this issue.

K. Short-Term Export Financing

In *Steel Products from Korea,* the Department determined that the GOK's short-term export financing program was countervailable (*see* 58 FR at 37350). Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable. During the POI, Hysco and POSCO were the only producers/exporters of the subject merchandise that used export financing.

To determine whether this export financing program confers a countervailable benefit, we compared the interest rate Hysco and POSCO paid on the export financing received under this program during the POI with the interest rate they would have paid on a comparable short-term commercial loan. *See* discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable benchmark interest rate. We then divided the benefit derived from all of Hysco's and POSCO's export loans by the value of the companies' total exports. On this basis, we determine a net countervailable subsidy of 0.08 percent *ad valorem* for Hysco and 0.04 percent *ad valorem* for POSCO.

L. Electricity Discounts Under the Requested Load Adjustment Program

The GOK introduced an electricity discount under the Requested Load Adjustment (RLA) program in 1990, to address emergencies in the Korea Electric Power Company (KEPCO's) ability to supply electricity. Under this program, customers with a contract demand of 5,000 kW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA

discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted POSCO electricity discounts under this program.

In *Sheet and Strip,* the Department found this program specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's total f.o.b. sales value for the POI. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

M. POSCO's Provision of Steel Inputs at Less Than Adequate Remuneration

POSCO is the only Korean producer of hot-rolled stainless steel coil (hot-rolled coil), which is the main input into the subject merchandise. During the POI, POSCO sold hot-rolled coil to Dongbu to produce subject merchandise. According to the response of Hysco, it purchased hot-rolled coil from POSCO, but it did not purchase hot-rolled coil from POSCO to produce subject merchandise. In *CTL Plate,* the Department determined that the GOK, through its ownership and control of POSCO, set prices of steel inputs used by the Korean steel industry at prices at less than adequate remuneration, and also found this program countervailable. *See CTL Plate,* 64 FR at 73184.

Under section 351.511(a)(2) of the CVD Regulations, the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, Dongbu imported hot-rolled coil; therefore, we are using Dongbu's actual imported prices of hot-rolled coil as our basis of comparison to the price at which POSCO sold hot-rolled coil to Dongbu. Based upon this comparison, we preliminarily determined that POSCO sold hot-rolled coil to Dongbu at less than adequate remuneration. As a result, a benefit is conferred to Dongbu under section 771(5)(E)(iv); therefore, we continue to find this program countervailable. Because Hysco did not purchase hot-rolled coil from POSCO to produce subject merchandise, we preliminarily determine that Hysco did not receive a benefit under this program. However, we are reviewing the issue of whether this program is an untied domestic subsidy. As this is the first time that this issue has been raised, the Department will collect additional information prior to the final determination; however, for the preliminary determination we continue to find this program tied to subject merchandise. We invite comments from interested parties.

To determine the value of the benefit under this program, we compared the monthly delivered weighted-average price charged by POSCO to Dongbu for hot-rolled coils to the monthly delivered weighted-average price Dongbu paid for imported hot-rolled coils. We made due allowances for the different specifications of hot-rolled coils, thus allowing the Department to compare a single product. We then multiplied this price difference by the quantity of hot-rolled coil that Dongbu purchased from POSCO during the POI. We then divided the amount of the price savings by the f.o.b. sales value of subject merchandise. On this basis, we preliminarily determine that Dongbu received a countervailable subsidy of 1.91 percent *ad valorem* from this program during the POI.

In *1999 Sheet and Strip,* the GOK argued that POSCO underwent privatization in September 2000, which constituted a program-wide change pursuant to section 351.526 of the CVD Regulations. In that administrative review, the Department determined that the information on the record in *1999 Sheet and Strip* was insufficient to determine whether a program-wide change occurred with respect to this program. We also noted that because of the long history and ties between the GOK and POSCO, the September 29, 2000 partial change in ownership must be carefully analyzed. In this current investigation, the respondents have made a similar claim that POSCO's change in ownership removes the GOK's control of POSCO which was found for this program in *CTL Plate* and in *Sheet and Strip.* The respondents have placed additional information on the record of this investigation regarding a program-wide change under section 351.526 of the CVD Regulations.

In *Sheet and Strip,* the Department relied upon a number of factors to determine that the GOK controlled POSCO. For example, we found that the GOK was the largest shareholder of POSCO and that the GOK's shareholdings of POSCO were ten times larger than the next largest shareholder. In order to further maintain its control over POSCO, the GOK enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK could exercise voting rights in excess of three percent of the company's common stock. In addition, the Chairman of POSCO was appointed by the GOK. The Chairman of POSCO was also a former Deputy Prime Minister and Minister of the GOK's Economic Planning Board, and was appointed as POSCO's president by the Korean President. Half of POSCO's outside directors were appointed by the GOK. The appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO was also only one of three companies designated a ''Public Company'' by the GOK. *See Sheet and Strip,* 64 FR 30642–43.

In this current investigation, the GOK and POSCO have placed information on the record indicating that many of the elements of control cited to in *Sheet and Strip* have changed. According to this information, the GOK through the government-owned Industrial Bank of Korea currently holds only 3.02 percent of POSCO's shares. According to the GOK, all of POSCO's shares are common shares and have equal voting rights. The GOK also reports that the Seoul Bank holds 1.47 percent of POSCO's shares. The Seoul Bank became government-owned as a result of the financial crisis in Korea. However, the GOK states that the shares listed for Seoul Bank are shares the bank holds on behalf of its customers in trust accounts. Shares held in these trust accounts are not in the possession of, or controlled by, the bank but belong to its customers.

POSCO also states that the restrictions that no individual other than the GOK can exercise voting rights in excess of three percent has been removed. Under the Securities and Exchange Act, a company designated as a ''public company'' was not permitted to have individual shareholders exercising voting rights in excess of three percent of the company's common shares.

According to POSCO's response, this legal requirement applied to POSCO until September 26, 2000. As part of POSCO's privatization process, the GOK removed POSCO's designation as a ''public company'' on that date. Accordingly, any legal limits on individual shareholder's voting rights or ownership in POSCO ceased on September 26, 2000. POSCO's Articles of Incorporation also included this restriction on the acquisition of shares. According to the company's response, POSCO had to wait until March 26, 2001, the next General Meeting of Shareholders, to amend its Articles of Incorporation. According to POSCO, although its Articles of Incorporation had not been implemented, once the GOK eliminated the restrictions on the acquisition of shares, POSCO was in effect no longer a public company.

According to POSCO's response, the company has seven standing directors and eight outside directors on its Board of Directors who are elected for terms of three years and may be re-elected. The directors are elected at the General Meeting of Shareholders, which usually take place in March of each year. According to the response, none of POSCO's current standing directors are either current or former government officials. With respect to the outside directors, five candidates were recommended by each of the five largest shareholders, which includes the IBK and Seoul Bank, and three candidates were recommended by the Board of Directors. There were changes to the Board of Directors during the General Meeting of Shareholders which occurred during the POI; two outside directors that were former government officials resigned and were replaced.

During verification we plan to closely examine whether or not the GOK continues either directly or indirectly to control POSCO's pricing policy in the Korean domestic market.

II. Programs Preliminarily Determined To Be Not Countervailable

A. GOK Infrastructure Investments at Kwangyang Bay Post-1991

Petitioners alleged that the GOK made infrastructure investments during the POI for POSCO at Kwangyang Bay. In *Plate in Coils,* we determined that the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. *See* 64 FR 15536. According to the responses of the GOK and POSCO, the only GOK expenditures made at Kwangyang Bay during the POI were for the container terminal. We determined that the GOK's investments in the container terminal were not specific in *Plate in Coils.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. In addition, both the responses of the GOK and POSCO state that the GOK did not build any ports at Kwangyang during the POI. Therefore, we continue to determine that this program is not countervailable.

B. R&D Aid for Anthracite Coal Technology

According to the GOK's response, this program refers to the project ''Technology for Sintered Anthracite Coal'' in the August 1996 report prepared by the Korea Iron and Steel Association (KOSA). According to the GOK, this project was solely financed by POSCO from the company's own funds. Because the GOK did not provide any funds for this project, we preliminarily determine that this program is not countervailable.

C. Asan Bay Infrastructure Subsidies

Petitioners alleged that the GOK provided infrastructure subsidies related to roads, piers, distribution facilities, and industrial water supplies to steel companies located at Asan Bay. Based upon the information on the record of this investigation, we preliminarily determine that no benefit was provided under this program. Therefore, we preliminarily find this program not countervailable.

According to the GOK's response, the roads located in and around the Asan Bay area can be divided into three different categories. The first category are roads that are located within the industrial estates which were built by Koland, the government agency which developed and sells the land at the Asan Bay industrial estates. The construction costs incurred by Koland for these roads are included as part of the land purchase price charged to companies purchasing land in the industrial estates. The second category are roads that are built on an individual company's site within the industrial estate which are built and paid for by the companies themselves. The third category of roads are the main roads and highways that are located around the Asan Bay area and which are used by the general public. Generally, the construction of toll free roads are handled by the Ministry of Construction and Transportation (MOCAT) and are built using funds from the GOK budget. These roads are part of the country's general road and highway system. The costs for construction and operation of toll roads are paid from the GOK budget and by the Korea Road Corporation (KRC). The construction costs of the KRC are recovered through the collection of tolls from users. The major highway that serves the Asan Bay area is the West Coast Highway, which is part of the National Highway system.

With respect to the allegation that companies located in Asan Bay industrial estates benefit from the GOK's provision of roads, we preliminarily determine that: (1) The roads build by the GOK within the industrial estate do not provide a benefit because the cost of road construction is included in the purchase price of the land; (2) the additional roads within the industrial estate on individual company sites do not provide a benefit because these roads are build and paid for by the company; and (3) the West Coast Highway and other national roads within the Asan Bay area are part of the country's national road system and thus constitute general infrastructure, and therefore do not provide a countervailable benefit.

With respect to the allegation of industrial water facilities, sewage facilities, and electric power facilities, the GOK states in its response that the companies located in the Asan Bay industrial estates pay for these services. The fees charged to these companies for these services are based on the general published tariff rates for each of these services. In addition, the GOK states that connections from the main water pipe to the user are constructed and paid for by the user; individual lines from the main electricity transformers to each companies' individual facility are constructed and paid for by the company; and sewage facilities located within an individual company's facility as well as the connection to the main sewage facility is constructed and paid for by the individual company. Because companies within the industrial estate pay for the construction of these facilities and pay the published tariff rates for industrial services, we preliminarily determine that no benefit is provided by the GOK by the provision of these goods and services. The GOK also states that there are no distribution depots at Asan Bay.

We note that with respect to this program, the Department was required to conduct verification of the provision of infrastructure at Asan Bay in a recent remand of *CTL Plate.* The Departments's remand redetermination of *CTL Plate* is in litigation, and thus, serves as no legal precedent in this instant investigation. However, factual information gathered in the course of the *CTL Plate* remand may be placed on the record of this investigation and considered in this

preliminary determination. Therefore, we have placed the public verification reports for both the GOK and POSCO from the *CTL Plate* remand on the record of this current investigation. *See* ''Remand Verification Report for the Government of Korea (GOK) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea'' and ''Remand Verification Report for Pohang Iron and Steel Co., Ltd. (POSCO) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea.'' Both of these public verification reports are dated November 26, 2001, and have been placed in the public file in the CRU. The information in the verification reports substantiates the information provided in the responses.

The petitioners also alleged that the companies located in the Asan Bay industrial estates benefit from the provision of port facilities. The port facilities at Asan Bay are not part of the industrial estates. The port facilities located at Asan Bay are owned and administered by the Inchon Port Authority (IPA), a division of the Ministry of Maritime and Fisheries (MOMAF). Furthermore, with respect to the provision of port facilities, we have previously found this program not countervailable in *Sheet and Strip.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine the provision of port facilities to be not countervailable.

III. Programs Preliminarily Determined Not Used

A. Anthracite Coal for Less Than Adequate Remuneration

Petitioners allege that the GOK provides anthracite coal to steel producers at suppressed prices. Petitioners claim that these suppressed prices are part of a GOK price stabilization program where steel producers are receiving anthracite coal at less than adequate remuneration. According to the response of the GOK, this program is designed to support and maintain the domestic coal industry in Korea by managing anthracite and briquette prices and is administered by MOCIE and the Coal Industry Promotion Board (CIPB). The GOK fixes the highest selling price of anthracite and briquette and then provides funds to the mining companies and briquette manufacturing companies for the difference between their costs of production and sales prices through the coal industry stabilization fund. Thus, the GOK controls prices of anthracite coal mined in Korea.

POSCO was the only respondent to state that it uses anthracite coal. However, POSCO stated that during the POI, it used only imported anthracite coal and thus did not use this program. Based on the fact that POSCO had no purchases of domestic anthracite coal, we preliminarily determine that POSCO did not use this program during the POI.

B. Grants to Dongbu

These grants which were contained in Dongbu's 1996 Financial Statement related to R&D projects that Dongbu participated in between 1991 and 1995. These grants equaled less than 0.5 percent of Dongbu's sales in 1996. Thus, under section 351.524(b)(2) of the CVD Regulations, these grants are expensed in the year of receipt. Therefore, because no benefit was conferred to Dongbu from these grants during the POI, we preliminary determine that this program was not used.

C. Technical Development Fund (RSTA Article 9, Formerly TERCL Article 8)

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduces the amount of taxes paid by the company. Under this program, capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

In *CTL Plate,* we determined that this program is countervailable because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determine in *CTL Plate* that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. *See CTL Plate* at 73181. While we continue to find this program countervailable, Dongbu only contributed funds to this reserve at the three percent rate; therefore, we find that the company did not benefit from this program. Thus, the countervailable aspect of this program was not used.

D. Special Depreciation for Energy-Saving Equipment

E. Export Insurance

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with 703(d)(1)(A)(i) of the Act, we have calculated individual rates for the companies under investigation. In addition, in accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' These rates are summarized in the table below:

Producer/exporter	Net subsidy rate
Dongbu Steel Co., Ltd. (Dongbu)	2.84 percent *Ad Valorem*.
Hyundai Hysco (Hysco)	0.32 percent *Ad Valorem*.
Pohang Iron & Steel Co., Ltd. (POSCO)	0.55 percent *Ad Valorem*.
Union Steel Manufacturing Co., Ltd. (Union)	7.00 percent *Ad Valorem*.
All Others Rate	2.84 percent *Ad Valorem*.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amount indicated above. This suspension will remain in effect until further notice. Because the estimated preliminary countervailing duty rate for POSCO and Hysco are *de minimis*, these two companies will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5107 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Sulfanilic Acid from Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of sulfanilic acid from Hungary. For information on the estimated countervailing duty rates, see infra section on ''Suspension of Liquidation.'' We are also aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to our regulations as codified at 19 CFR Part 351 (April 2001).

Petitioner

The petitioner in this investigation is Nation Ford Chemical Company (''the petitioner'').

Case History

The following events have occurred since the publication of the notice of initiation in the Federal Register. See Notice of Initiation of Countervailing Duty Investigation: Sulfanilic Acid from Hungary, 66 FR 54229 (October 26, 2001) (''Initiation Notice'').

On October 22, 2001, we issued countervailing duty questionnaires to the Government of Hungary (''GOH'') and to Nitrokemia 2000 Rt. (''Nitrokemia 2000''), the only producer/exporter of sulfanilic acid in Hungary.

On November 13, 2001, the petitioner filed a new subsidy allegation and also provided new information to supplement its previous uncreditworthiness allegation (which the Department had previously determined was unsupported). We addressed the issues raised in the petitioner's letter in the December 14, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations'' (''New Allegations Memorandum''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

On November 28, 2001, we received a response to the Department's questionnaire from the GOH. On December 17, 2001, the Department issued a supplemental questionnaire to

the GOH; this supplemental questionnaire also included questions regarding the new allegations contained in the petitioner's November 13 letter. On December 18, 2001, the GOH submitted a supplement to its original questionnaire response. The GOH submitted a response to the Department's supplemental and new programs questionnaire on January 31, 2002.

On December 4, 2001, we postponed the preliminary determination in this investigation until February 25, 2002. See Sulfanilic Acid from Hungary: Postponement of Preliminary Determination of Countervailing Duty Investigation, 66 FR 63674 (December 10, 2001).

Also on December 4, the Department sent letters to all of the parties in this proceeding instructing them how to properly file submissions with the Department. We did so, in part, because 1) on November 28, 2001, Nitrokemia 2000 improperly transmitted to the Department, via e-mail, its questionnaire response, but did not properly submit a hard-copy response pursuant to 19 CFR 351.303, and 2) many of the parties in this proceeding were not serving their submissions on other interested parties as required by 19 CFR 351.303. This December 4 letter also indicated that Nitrokemia 2000's questionnaire response needed to be filed according to the Department's filing requirements in order for it to be accepted by the Department.

On December 10, 2001, Nitrokemia 2000 responded via e-mail to this letter, but did not indicate whether it was planning to properly submit its questionnaire response. Therefore, on December 11, 2001, we sent a second letter to Nitrokemia 2000 notifying Nitrokemia 2000 that it needed to properly file its questionnaire response by December 18, 2001. (All e-mails that were received from Nitrokemia 2000 were attached for the record to the subsequent responses that were sent by the Department to Nitrokemia 2000.) On December 18, 2001, we received another e-mail from Nitrokemia 2000 which stated that Nitrokemia 2000 would be unable to respond to the Department's questionnaire by December 18, 2001 because its manufacturing facilities had been shut down for the holidays. Also on December 18, the Department issued a new program questionnaire to Nitrokemia 2000 which included questions related to the new allegations, noted above.

On December 21, 2001, we sent a third letter to Nitrokemia 2000 with respect to the filing of its questionnaire response. In this letter, although Nitrokemia 2000 had not actually asked for an extension of time to respond to the Department's questionnaire, we gave Nitrokemia one last extension until January 14, 2002 to respond to the Department's questionnaire. Additionally, we also gave Nitrokemia 2000 an extension until that same date to respond to the Department's December 18, 2001 new program questionnaire.

On January 11, 2002, Nitrokemia 2000 submitted its questionnaire response. Subsequent to this submission, on January 14, 2002, Nitrokemia 2000 sent the Department an e-mail indicating that it did not intend to submit a response to the Department's new program questionnaire, which was due to the Department on January 14. On January 16, 2002, we issued a supplemental questionnaire to Nitrokemia 2000. In this supplemental questionnaire, we gave Nitrokemia 2000 another opportunity to respond to the new programs questionnaire, extending its submission deadline to January 28, 2002. On January 28, 2002, Nitrokemia 2000 submitted its responses to both the Department's supplemental questionnaire and the new programs questionnaire.

On January 31, 2002, the petitioner submitted comments on the questionnaire responses filed by both Nitrokemia 2000 and the GOH. Nitrokemia 2000 responded to these comments on February 14, 2002.

On February 12 and February 19, 2002, the petitioner submitted comments on the upcoming preliminary determination.

Finally, on February 15, 2002, the petitioner requested that the Department align the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary. For further information, see infra section on ''Alignment with Final Antidumping Duty Determination.''

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because Hungary is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Hungary materially injure, or threaten material injury to, a U.S. industry. On November 13, 2001, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Hungary of the subject merchandise. See Sulfanilic Acid from Hungary and Portugal, 66 FR 57988 (November 19, 2001).

Alignment with Final Antidumping Duty Determination

On February 15, 2002, we received a request from the petitioner to postpone the final determination in this investigation to coincide with the final determination in the companion antidumping (''AD'') investigation of sulfanilic acid from Hungary.

The companion AD investigation and this countervailing duty investigation were initiated on the same date and have the same scope. See Initiation Notice and Notice of Initiation of Antidumping Duty Investigations:

Sulfanilic Acid from Hungary and Portugal, 66 FR 54214, 54218 (October 26, 2001). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the companion AD investigation of sulfanilic acid from Hungary.

Change in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (''Delverde III''), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993) (''GIA''). The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology following the CAFC's decision in Delverde III. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

There are two potential changes in ownership to be examined in this investigation: the creation of Nitrokemia 2000 in late 1997–1998, and Nitrokemia 2000's privatization in November/December 2000.

With respect to Nitrokemia 2000's creation in 1997–1998, we have preliminarily determined that no change-in-ownership analysis is required. According to record information, in November 1997, Nitrokemia Rt., a state-owned company, began an internal reorganization based on a decision by the GOH. As part of this reorganization, many of Nitrokemia Rt.'s production facilities, including its sulfanilic acid production facilities, were transferred to a newly created fully-owned subsidiary of Nitrokemia Rt., Nitrokemia 2000. Then, in May of 1998, Nitrokemia Rt. transferred Nitrokemia 2000 to the Hungarian State Privatization and Holding Company (''APV''), the Hungarian government entity responsible for privatizing state-owned shares and assets, in order for it to be sold to private investors.

According to Department practice regarding privatizations, sales ''must involve unrelated parties, one of which must be privately-owned.'' (See GIA, 58 FR at 37266, ''Types of Restructuring 'Transactions' and the Allocation of Previously Received Subsidies.'') Because all of the parties involved in this transaction were related in that they were all owned by the GOH, we do not conclude from the evidence on the record that we should conduct our ''person'' analysis with respect to the 1997–1998 transactions.

With respect to Nitrokemia 2000's privatization, in November/December 2000, 85 percent of Nitrokemia 2000 was sold to Nitrokemia Invest Kft., a group of Nitrokemia 2000 managers and executives, while the remaining 15 percent was offered for sale to company workers with the contingency that, if the company workers did not want the shares, the remaining 15 percent would be purchased by Nitrokemia Invest Kft. Record evidence indicates that Nitrokemia Invest Kft. was the sole bidder to respond to the call for tenders by APV. APV's call for tender specified that any prospective bidders must pay for the purchase of the company in cash only, and that bidders must agree to release APV from its role as guarantor of Nitrokemia 2000's Hungarian forint (''HUF'') 2 billion loan. The tender offer also required bidders to not reduce employment at Nitrokemia 2000 by more than 10 percent within the first three years after purchasing the company. Finally, the tender offer required the buyer and Nitrokemia 2000 to ''tolerate and facilitate, according to their ability, the continuation and earliest possible completion of the environmental clean-up work taking place on the Nitrokemia Industrial site, as well as the earliest possible determination of the normal environmental state of the industrial site.''

As noted above, in making the ''person'' determination, we analyze factors such as the continuity of general business operations, the continuity of production facilities, the continuity of assets and liabilities, and the retention of personnel. According to both the GOH and Nitrokemia 2000, the sale of Nitrokemia 2000 at the end of 2000 resulted in no changes in any of these aspects of Nitrokemia 2000. Therefore, for the preliminary determination, we are attributing subsidies received by Nitrokemia 2000 prior to its privatization to Nitrokemia's sales during all of the POI.

Use of Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability.

In their responses, both the GOH and Nitrokemia 2000 failed to answer many of the Department's numerous and repeated questions relating to the alleged forgiveness of environmental liabilities and the subsequent transfer of Nitrokemia 2000 to APV for privatization. For instance, in our original questionnaire, we asked both the GOH and Nitrokemia 2000 to describe the process by which Nitrokemia 2000 and Nitrokemia Rt. were divided, how it was determined which company would receive the assets and liabilities, how the finances of the companies were divided, and the amount of the outstanding environmental liabilities. We also asked the respondents to submit financial statements and/or annual reports for both Nitrokemia 2000 and Nitrokemia Rt. Neither the GOH nor Nitrokemia 2000 provided the required information, stating only that Nitrokemia 2000 was responsible for any liabilities generated from its current production. The same questions were also left unanswered in supplemental questionnaires, despite several extensions being granted to the respondents and the respondents having almost a month to reply to the supplemental questions.

We also asked the parties to respond to several questions relating to the creditworthiness of Nitrokemia 2000 in 1998. Neither respondent answered these questions, even after we provided another opportunity to Nitrokemia 2000 to answer the questions after it originally stated that it would not respond to the creditworthiness questionnaire at all.

Moreover, as noted in the ''Case History'' section, above, although the GOH provided a prompt and timely response to the Department's original questionnaire, Nitrokemia 2000 did not properly file its questionnaire response until almost a month and a half after the questionnaire response was due. Although Nitrokemia 2000 never formally requested an extension, the Department gave Nitrokemia 2000 three subsequent opportunities to provide its response to the questionnaire. Additionally, the GOH in its responses repeatedly indicated that only the company had much of the requested information, even though the GOH owned Nitrokemia 2000 through its state privatization company, APV, through almost the end of the POI.

Based on the above discussion, we preliminarily determine that the respondents withheld information requested by the Department relating to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to section 776(a)(2) of the Act. Moreover, we preliminarily determine that an adverse inference is justified with respect to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to 776(b) of the Act because the respondents, as discussed above, have failed to cooperate to the best of their abilities.

With respect to Nitrokemia 2000's creditworthiness in 1998, as adverse facts available, we preliminarily determine that Nitrokemia 2000 was uncreditworthy in 1998. See, infra, further discussion in the ''Creditworthiness'' section.

As for the forgiveness of the environmental liabilities, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness attributable to Nitrokemia 2000 during the POI pursuant to 19 CFR 351.508. As adverse facts available, we determined that the total amount of the liability is HUF 7.5 billion, the average amount of the HUF 5 to 10 billion estimates provided in the petition. See, infra, ''Analysis of Programs'' section for a more detailed discussion of the attribution of the benefit amount to Nitrokemia 2000 and the benefit calculation itself.

When employing an adverse inference, the statute indicates the Department may rely upon information derived from, inter alia, the petition. In doing so, however, the Department should ''to the extent practicable'' corroborate the information from independent sources reasonably at its disposal. See Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994), at 870 regarding use of ''secondary'' information. In this case, with respect to Nitrokemia 2000's creditworthiness in 1998, several independent newspaper articles included in the petition indicate that Nitrokemia was not in sound financial condition in 1998. Moreover, Nitrokemia Rt.'s 1998 financial statements and financial ratios show that the company was losing money at that time, and that the company was not in good financial condition. (See New Allegations Memorandum for a further discussion of Nitrokemia's creditworthiness analysis.)

As for Nitrokemia's environmental liabilities, we found several independent news articles (in addition to the news articles and study done by the U.S. Foreign Commercial Service in Hungary, which were both included in the petition) that show that the amount of environmental liabilities are approximately HUF 5 to 10 billion. Therefore, we determine that the facts available information in question has probative value, and that we may appropriately rely upon it.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. See Countervailing Duties; Final Rule, 63 FR 65348, 65367 (November 28, 1998).

In this investigation, we are examining Nitrokemia 2000's

creditworthiness in 1998. Neither the GOH nor Nitrokemia 2000 provided a response to the Department's uncreditworthiness questions. Thus, as discussed, supra, in the ''Use of Facts Available'' section, we preliminarily determine, as facts available, that Nitrokemia 2000 was uncreditworthy in 1998.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the ''IRS Tables''). For sulfanilic acid, the IRS Tables prescribe an AUL of 11 years. Neither Nitrokemia 2000 nor any other interested party disputed this allocation period. Therefore, we have used the 11–year allocation period for Nitrokemia 2000.

Benchmarks for Discount Rates and Loans

Because we found Nitrokemia 2000 to be uncreditworthy in 1998 (see, supra, section on ''Creditworthiness''), we have calculated the long-term uncreditworthy discount rate for 1998 in accordance with 19 CFR 351.524(d)(3)(ii).

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C- rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by creditworthy companies, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the weighted-average rate on fixed-rate long-term enterprise sector loans in Hungary as reported by the National Bank of Hungary. For the term of the debt, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on an 11–year term, since the AUL in this investigation is 11 years.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Program Preliminarily Determined to Be Countervailable

Forgiveness of Environmental Liabilities

According to record evidence, Nitrokemia 2000 was created in November 1997 as a fully-owned subsidiary of Nitrokemia Rt. through an internal reorganization. Record evidence indicates that, as part of this reorganization, Nitrokemia 2000 was given responsibility for Nitrokemia Rt.'s viable operations, including its sulfanilic acid operations. Nitrokemia Rt. continued to be responsible for the company's poorly-performing operations, as well as all of the company's previous environmental liabilities generated by the plants' operations prior to the division. Information on the record from the petition indicates that these liabilities were valued between HUF 5 billion and 10 billion.

Then, in May 1998, Nitrokemia 2000 was transferred from Nitrokemia Rt. to APV in order for the GOH to begin preparations for privatization. We preliminarily determine that it was at this point that Nitrokemia 2000 was completely removed from the environmental responsibilities that had been generated in the past. Although the split from Nitrokemia Rt. had begun in November 1997, because Nitrokemia was a fully-owned subsidiary of Nitrokemia Rt. until May 1998, Nitrokemia 2000 was still potentially impacted by these environmental liabilities while Nitrokemia Rt. was still its parent company. However, once Nitrokemia 2000 was transferred to APV, the split between Nitrokemia Rt. and Nitrokemia 2000 was completed, and Nitrokemia 2000 was removed from its previous environmental liabilities.

As discussed, supra, in the ''Use of Facts Available'' section, we have, as facts available, preliminarily determined that the removal of Nitrokemia 2000's responsibility for any environmental clean-up liabilities is a countervailable subsidy. Specifically, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness that is attributable to Nitrokemia 2000. As adverse facts available, we determined that the appropriate amount of the total environmental forgiveness is HUF 7.5 billion, the average amount of the estimates provided in the petition. Finally, we also preliminarily determine that the debt forgiveness is specific pursuant to section 771(5A)(D) because it was limited to Nitrokemia.

According to Nitrokemia 2000's and Nitrokemia Rt.'s 1998 financial statements (which were submitted by the petitioner along with Nitrokemia 2000's 1999 and 2000 annual reports and Nitrokemia Rt.'s financial statements), following the split of the two companies, Nitrokemia 2000 received 53 percent of the assets of the former company. Therefore, in order to determine the amount of the benefit attributable to Nitrokemia 2000, we attributed 53 percent of the total environmental liabilities, noted above as HUF 7.5 billion, to Nitrokemia 2000.

This methodology is consistent with the methodology we used in the Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508, 15513 (March 31, 1999) (''SSPC Italy''). In SSPC Italy, we found that when ILVA S.p.A. was demerged into three separate entities, only one of the three entities that were created in the split received the former ILVA's liabilities, leaving the other two entities free of ILVA's former debt. We determined that the forgiveness of debt in that instance was a countervailable subsidy to the two companies that did not receive any of the liabilities, and based the amount of the benefit attributable to the company under investigation in that case on the relative asset allocations of the companies that were formed from ILVA's assets.

We treated the debt forgiveness to Nitrokemia 2000 as a non-recurring grant consistent with 19 CFR 351.524 because it was a one-time, extraordinary event. Because Nitrokemia was uncreditworthy in 1998, the year in which the debt forgiveness took place, we used the uncreditworthy discount rate described in the ''Subsidies Valuation Information'' section, above. Finally, we divided the amount allocated to the POI from this debt forgiveness attributable to Nitrokemia 2000 by Nitrokemia 2000's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 10.69 percent ad valorem exists for Nitrokemia 2000.

II. Program Preliminarily Determined to Not Be Countervailable

Restructuring Assistance Provided to Nitrokemia 2000

Nitrokemia 2000's 1998 financial statements show that its issued capital at the time of its inception was HUF 4,653,360,000, which is HUF 2 billion more than the issued capital transferred from Nitrokemia Rt. according to Nitrokemia Rt's financial statements.

In its response, Nitrokemia 2000 reported that this HUF 2 billion increase over the invested capital provided by Nitrokemia Rt. was the result of cash received through a bond offering at its inception, and not a cash infusion by the GOH as alleged by the petitioner. Therefore, because there is no evidence of a financial contribution from the GOH as described in section 771(5)(D) of the Act, we preliminarily determine that this increase in Nitrokemia 2000's invested capital in 1998 is not a countervailable subsidy pursuant to section 771(5) of the Act.

However, in their responses, both the GOH and Nitrokemia 2000 report that Nitrokemia 2000 received a government guarantee on a loan that was outstanding during the POI. Specifically, according to Nitrokemia 2000's financial statements and annual reports, Nitrokemia 2000 received a government guarantee for an HUF 2 billion loan that it took out in January 2000. This loan was repaid as of December 19, 2000 when the company was privatized pursuant to the requirements put forth in the APV tender.

While we do not currently have sufficient information to further analyze this loan guarantee for the preliminary determination, pursuant to section 775(1) of the Act, we will be requesting additional information on the nature of this loan guarantee from the GOH and Nitrokemia 2000 prior to the final determination.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for the only company under investigation, Nitrokemia 2000.

With respect to the ''all others'' rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an ''all others'' rate for exporters and producers not individually investigated. In this case, although the rate for the only investigated company is based on facts available under section 776 of the Act, there is no other information on the record upon which we could determine an ''all others'' rate. As a result, in accordance with sections 777A(e)(2)(B) and 705(c)(5)(A)(ii), we have used the rate for Nitrokemia 2000 as the ''all others'' rate.

We preliminarily determine the total estimated net countervailable subsidy rate for Nitrokemia 2000 to be the following:

Producer/Exporter	Net Subsidy Rate
Nitrokemia 2000 Rt.	10.69%
All Others	10.69%

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of sulfanilic acid from Hungary for Nitrokemia 2000 and for any non-investigated exporters that entered, or were withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice. However, this suspension of liquidation may not remain in effect for more than four months pursuant to section 703(d)(3) of the Act.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5103 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020502A]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

SUMMARY: NMFS has received a request from the Department of the Air Force, 30th Space Wing, on behalf of The Boeing Company (Boeing) for an authorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Boeing to incidentally take, by harassment, small numbers of Pacific harbor seals at south VAFB beginning in mid-March 2002.

DATES: Comments and information must be received no later than April 3, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments will not be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext. 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

...any act of pursuit, torment, or annoyance which

(a) has the potential to injure a marine mammal or marine mammal stock in the wild (''Level A harassment''); or

(b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (''Level B harassment'').

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2001, NMFS received an application from the 30th Space Wing on behalf of Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals incidental to harbor activities related to the Delta IV/EELV, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging. The harbor where activities will take place is on south VAFB approximately 2.5 miles south of Point Arguello, CA, and approximately 1 mile north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Modifications to the existing wharf are needed to accommodate the specially designed transport vessel, the Delta Mariner, that will be used for delivering the Delta IV/EELV's common booster core (CBC). These modifications involve removing portions of the wharf surface, re-surfacing the wharf with concrete and stainless steel rub-rails, and construction of a ramp on the seaward portion of the wharf. Equipment to be used includes: a skip-loader, concrete saw, concrete ready-mix truck, and dump truck. Measured noise levels of equivalent heavy equipment ranged from 61 dB A-weighted (quietest measurement from clamshell dredge measurement) to 81 dB A-weighted (loudest measurement from roll-off truck transporter) at a distance of 76.2 meters (m) (250 feet, ft). (Acentech, 1998). These wharf modifications are scheduled to begin in mid-March 2002 for a 6–week period.

Delta Mariner CBC off-loading operations and associated cargo movement activities will occur a maximum of 6 times per year, with the first Mariner visit scheduled for April 2002 and the first off-load operation for August 2002. The Delta Mariner is a 95.1 m (312 ft) long, 25.6 m (84 ft) wide steel hull ocean-going vessel capable of operating at a 2.4 m (8 ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the Mariner. Sources of noise from the Delta Mariner vessel include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the CBC from the Mariner requires use of an Elevating Platform Transporter (EPT). The EPT is an additional source of noise, with sound levels measured at a maximum of 82 dB A-weighted 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). EPT operation procedures require 2 short (approximately 1/3 seconds) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the Mariner by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of Mariner docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the Delta Mariner, the harbor will need to be dredged to a working depth of approximately 3.0 m (10 ft) mean lower low water level plus a 0.61 m (2 ft) over-dredge. Dredging of the harbor will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 61–81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24–hours a day for 3–5 weeks. The frequency of maintenance dredging will be based on fill rate surveys conducted periodically during the first year following the initial dredge

to determine the sedimentation rate. Boeing expects maintenance dredging would likely be required every 2–3 years.

A more detailed description of the work proposed for 2002 is contained in the application which is available upon request (see ADDRESSES) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Description of Habitat and Marine Mammals Affected by the Activity

The only marine mammal species likely to be harassed incidental to harbor activities at south VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,040 (775 on south VAFB) based on sighting surveys and telemetry data (SRS Technologies 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 76.2 m (250 ft) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting wharf modification, Delta Mariner operations, cargo loading, and dredging activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of 7 seals sighted per day. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 kilometers (km) (1 mile, mi) north.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Three other marine mammal species are known to occur infrequently along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These three species are: the California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*) and northern fur seal (*Callorhinus ursinus*). Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski et al. (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the wharf modifications, Delta Mariner and off-loading operations, and dredging, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound levels from all equipment drops to a maximum level of 95 dB A-weighted within 50 ft (15.2 m) of the sources. In contrast, the ambient background noise measured approximately 76.2 m (250 ft) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

According to the MMPA, when harbor activities disrupt the behavioral patterns of harbor seals, they are considered to be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and will not cause serious injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and would be considered a take by harassment due to disruption of behavioral patterns. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites, could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, since on average the number of harbor seals hauled out near the site is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes (i.e., Level B harassment).

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and ENSR International's 2001 Final Environmental Assessment. Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 30 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 7 seals sighted during previous dredging operations in the harbor. Using the maximum and average number of seals hauled out per day, assuming that half of the seals will use the site at least twice, assuming that half of the seals hauled out will react to the activities, and using a maximum total of 83 operating days in 2002–2003, NMFS calculates that between 623 and 145 Pacific harbor seals may be subject to Level B harassment, as defined in 50 CFR 216.3.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals that haul out near the south VAFB harbor. The harbor seal haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals in the area to reproduce.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out near south VAFB harbor are expected based on the relatively low levels of sound generated by the equipment to be used during Boeing's harbor activities (maximum level of 95 dB A-weighted within 50 ft (15.2 m)) and the relatively short time periods over which the project will take place (totaling approximately 83 days). However, Boeing expects that the harbor activities may cause disturbance reactions by some of the harbor seals hauled out on the adjacent beach and rocks. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities should be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A qualified marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities. If flushing results, then the activities suspected of causing the seals to enter the water will be delayed until the seals leave the area.

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks.

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for harbor seals during all harbor activities. During nighttime activities, the harbor area will be lit and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of harbor seals in the project area prior to initiating project activities.

(2) Conducting and recording observations on harbor seals in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for harbor seals to haul out (+ 2 ft. or less).

(3) Conducting post-construction observations of harbor seal haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

As required by the MMPA, this monitoring plan will be subject to a review by technical experts prior to formal acceptance by NMFS.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

Boeing has not requested the take of any listed species. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

Conclusions

NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging, will result, at worst, in a temporary modification in behavior by Pacific harbor seals. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since harbor seals haul out in such small numbers near the site (maximum hauled out in one day estimated at 30 seals). The effects of the harbor activities are expected to be limited to short-term and localized behavioral changes. Therefore, NMFS preliminarily concludes that the effects of the planned demolition activities will have no more than a negligible impact on pinnipeds.

Due to the localized nature of these activities, the number of potential takings by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels and will be entirely avoided through the incorporation of appropriate mitigation measures. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Proposed Authorization

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south Vandenberg Air Force Base, CA, (VAFB) over a 1–year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse

impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: February 26, 2002.

David Cottingham,

Deputy Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–5101 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP).

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, March 18, 2002, and conclude by 3 p.m. on Wednesday, March 20, 2002.

ADDRESSES: The meeting will be held at the Isle of Capri Hotel, 151 Beach Boulevard, Biloxi, MS; telephone: 866–475–3847.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and begin the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 11, 2002.

Dated: February 27, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–5102 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee and Monkfish Oversight Committee in March, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on March 18, 2002 and March 21, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 18, 2002, 9:30 a.m.—Capacity Oversight Committee Meeting.

The Committee will finalize the list of capacity reduction proposals to be forwarded to the Council for further consideration and possible inclusion in Amendment 13 to the Northeast Multispecies Fishery Management Plan. Based on the Council direction, the range of proposals will provide a basis for reducing latent or unused days-at-sea (DAS) and capacity to further the biological goals of Amendment 13; under consideration include Alternatives that reduce the amount of allocated DAS from approximately 150,000 to between 67,000 and 86,000 allocated DAS.

Thursday, March 21, 2002, 8:30 a.m.—Monkfish Oversight Committee Meeting.

The Committee will review Council comments on Amendment 2 Goals and Objectives and make appropriate adjustments. The Committee will review information provided by the Plan Development Team and/or Councils' staffs and outline management strategies for further development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 27, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–5100 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries, Exported Before April 1, 2002, and Entered for Consumption or Withdrawn from Warehouse for Consumption Before June 1, 2002

February 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to allow a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the **Federal Register** informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in *Rubie's Costume Company v. United States.* This announcement applied to imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170). The Committee for the Implementation of Textile Agreements has decided to allow a grace period before imposing quota and visa requirements. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to exempt from export visa and quota requirements goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002.

EFFECTIVE DATE: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

The Committee for the Implementation of Textile Agreements has decided to allow a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170).

Effective on March 1, 2002, you are directed to exempt from export visa and quota requirements goods as described above that are exported prior to April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption prior to June 1, 2002.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–5194 Filed 2–28–02; 1:47 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Notice.

DATES: Consideration will be given to all comments received by April 13, 2002.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Suppliers Customer Satisfaction Diagnostic Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 380.

Responses per Respondent: 1.

Annual Responses: 380.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 95.

Needs and Uses: The information collection is necessary to determine the reasons for supplier satisfaction/dissatisfaction with Defense acquisition processes. The information will be used to improve Defense acquisition processes to assure supplier satisfaction. Feedback from suppliers will be used to formulate policies, programs and practices for improving the level of supplier satisfaction. A web-based survey is planned for the supplier diagnostic survey. The survey instrument will be posted on the web, and suppliers will be sent invitations via e-mail to access the Web site and complete the survey instrument.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4982 Filed 3–1–02; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Notice.

DATES: Consideration will be given to all comments received by April 3, 2002.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Security Security Customer Satisfaction Survey; OMB Number 0704—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 25 minutes.

Annual Burden Hours: 2,500.

Needs and Uses: This information collection is necessary to obtain information to ascertain the level of satisfaction that private sector industrial users have with the products and services the Defense Security Service (DSS) provides. This survey is necessary to meet the requirements of the FY

2000–2003 Defense Management Council (DMC) Performance Contract. The DMC Performance Contract requires DSS to develop and administer customer satisfaction surveys for each of its three primary business areas: the Personnel Security Investigations Program (PSI), the Industrial Security Program (ISP), and the Security Education and Training Program. The survey will be administered on-line via the Internet.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: Biennially.

Respondents Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 30503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4983 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB review; comment request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 3, 2002.

Title, Form, and OMB Number: Application for Training leading to a Commission in the United States Air Force; AF Form 56; OMB Number 0701–0001.

Type of Request: Reinstatement.

Number of Respondents: 2,900.

Responses per Respondent: 1.

Annual Responses: 2,900.

Average Burden per Response: 3 hours.

Annual Burden Hours: 8,700.

Needs and Uses: Information contained on Air Force Form 56 supports the Air Force's selection for officer training programs for civilian and military applicants. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to a commissioning program. Data from this form is used to select fully qualified persons for the training leading to commissioning. Data supports the Air Force in verifying the eligibly of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DOIS, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4984 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–06]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–06 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 FEB 2002
In reply refer to:
I-01/013483

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-06, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $255 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$153 million
Other	$102 million
TOTAL	$255 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: In support of their Fast Missile Craft Program for 53 RGM-84L-4 Harpoon Block II anti-ship missiles, four PHALANX Close-In Weapon Systems (CIWS), 50,000 rounds of 20mm tungsten ammunition, four AN/SWG-1A Harpoon Shipboard Command Launch Control Systems, spare and repair parts, support equipment, publications, U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support.**

(iv) **Military Department: Navy (LDU)**

(v) **Prior Related Cases, if any:**
FMS case ABZ - $68 million - 18Apr98
FMS case ABW - $48 million- 27Jan98
FMS case AAZ - $53 million - 6Jun94
FMS case AAU - $39 million - 27Aug90
FMS case AAG - $38 million - 24Nov83

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress: 14 FEB 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Weapons Support for the Fast Missile Craft Program

The Government of Egypt has requested a possible sale in support of their Fast Missile Craft Program for 53 RGM-84L-4 Harpoon Block II anti-ship missiles, four PHALANX Close-In Weapon Systems (CIWS), 50,000 rounds of 20mm tungsten ammunition, four AN/SWG-1A Harpoon Shipboard Command Launch Control Systems, spare and repair parts, support equipment, publications, U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support. The estimated cost is $255 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East. This sale is consistent with these U.S. objectives and with the 1950 Treaty of Mutual Cooperation and Security.

The Fast Missile Craft will be acquired by direct commercial sale and notified by a separate 36(c) notification. These additional systems, which are to be installed on the Fast Missile Craft, will allow Egypt to maintain its current defensive capability. Egypt currently has CIWS and Harpoon missiles in their inventory and will have no difficulty absorbing these additional weapons systems.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be The Boeing Company of St. Charles, Missouri and Raytheon Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four contractor representatives for the follow-on technical support services to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MK 15 Block 1B PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2, The AN/SWG-1A Harpoon Ship Command Launch Control System (HSCLCS) uses target position data to compute a fire control solution for missile launch. It includes equipment for monitoring and controlling Harpoon missile launching and for performing maintenance and training procedures. The AN/SWG-1A provides capabilities such as automatic engagement planning, waypoint options, off-axis launch, salvo select options, and background ship avoidance. The HSCLCS contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

(1) HARPOON control console
(2) HSCLCS embedded trainer

3. The RGM-84L-4 Block II Harpoon missile, excluding a land strike capability (coastal target suppression), provides a Global Positioning System/Inertial Navigation System capability with improved Anti-Surface Warfare against ships in the open ocean and littoral waters. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a Guidance Section Components
(1) radar seeker (S)

b. AN/SWG-1A(V) Command Launch System
(1) Harpoon control console (C)
(2) Harpoon embedded trainer software (C)

c. Missile Characteristics and Performance Data (S)

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–4985 Filed 3–1–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting.

AGENCY: Defense Intelligence Agency Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, As amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: March 5 & 6, 2002 (830 am to 1700 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria J. Prescott, Director/Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4981 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 222. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 222 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 221. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 222 UPDATES RATES FOR HAWAII.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
BARROW	140		75		215	05/01/2000
BETHEL	90		63		153	09/01/2001
CLEAR AB	80		55		135	09/01/2001
COLD BAY	153		60		213	11/01/2001
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER	85		49		134	09/01/2001
CORDOVA	80		72		152	03/01/2000
CRAIG						
05/01 - 08/31	90		65		155	09/01/2001
09/01 - 04/30	77		64		141	09/01/2001
DEADHORSE	80		67		147	03/01/1999
DELTA JUNCTION	79		50		129	09/01/2001
DENALI NATIONAL PARK						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
DILLINGHAM	95		60		155	09/01/2001
DUTCH HARBOR-UNALASKA	110		67		177	09/01/2001
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
ELMENDORF AFB						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FAIRBANKS						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
FT. GREELY	79		50		129	09/01/2001
FT. RICHARDSON						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FT. WAINWRIGHT						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
HOMER						
05/15 - 09/15	119		67		186	09/01/2001
09/16 - 05/14	79		63		142	09/01/2001
JUNEAU	109		65		174	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	131	69	200	09/01/2001
11/01 - 03/31	86	65	151	09/01/2001
KENNICOTT	159	71	230	09/01/2001
KETCHIKAN	98	64	162	09/01/2001
KING SALMON				
05/01 - 10/01	160	80	240	09/01/2001
10/02 - 04/30	95	73	168	09/01/2001
KLAWOCK				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
KODIAK	99	70	169	09/01/2001
KOTZEBUE				
09/01 - 04/30	95	62	157	10/01/2001
05/01 - 08/31	137	69	206	09/01/2001
KULIS AGS				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
MCCARTHY	159	71	230	09/01/2001
METLAKATLA				
05/30 - 10/01	98	56	154	09/01/2001
10/02 - 05/29	78	54	132	09/01/2001
MURPHY DOME				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
NOME	89	64	153	09/01/2001
NUIQSUT	175	53	228	09/01/2001
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/31 - 09/30	119	66	185	09/01/2001
10/01 - 05/30	74	61	135	09/01/2001
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY	98	64	162	09/01/2001
SPRUCE CAPE	99	70	169	09/01/2001
TANANA	89	64	153	09/01/2001
UMIAT	172	78	250	09/01/2001
VALDEZ				
05/01 - 10/01	109	69	178	09/01/2001
10/02 - 04/30	99	68	167	09/01/2001
WAINWRIGHT	124	51	175	09/01/2001
WASILLA	95	60	155	01/01/2000
WRANGELL	98	64	162	09/01/2001
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	68	180	03/01/2002
EASTPAC NAVAL COMP TELE AREA	112	68	180	03/01/2002
FT. DERUSSEY	112	68	180	03/01/2002
FT. SHAFTER	112	68	180	03/01/2002
HICKAM AFB	112	68	180	03/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	68	180	03/01/2002
ISLE OF HAWAII: HILO	89	61	150	03/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	155	71	226	03/01/2002
12/01 - 04/30	203	76	279	03/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	155	74	229	03/01/2002
ISLE OF OAHU	112	68	180	03/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	155	71	226	03/01/2002
12/01 - 04/30	203	76	279	03/01/2002
KILAUEA MILITARY CAMP	89	61	150	03/01/2002
LUALUALEI NAVAL MAGAZINE	112	68	180	03/01/2002
MCB HAWAII	112	68	180	03/01/2002
NAS BARBERS POINT	112	68	180	03/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	68	180	03/01/2002
SCHOFIELD BARRACKS	112	68	180	03/01/2002
WHEELER ARMY AIRFIELD	112	68	180	03/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	16	29	12/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4988 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for Force Transformation of the 172nd Infantry Brigade (Separate) and Mission Sustainment in Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army proposes to implement a range of activities related to force transformation and mission sustainment in Alaska. The primary proposed activities are associated with conversion of the 172nd Infantry Brigade (Separate) into an Interim Brigade Combat Team (IBCT), a rapidly deployable, early entry, medium weight force with a decreased logistical footprint. Impacts to the human environment, to include surrounding communities, from restructuring the 172nd infantry Brigade (Separate) and from enhancing associated ranges, facilities, and infrastructure to meet transformation and mission sustainment objectives will be analyzed.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Gardner, Directorate of Public Works, 730 Quartermaster Road, Attention: APVR–RPW–EV (Gardner), Fort Richardson, AK 99505–6500; telephone: (907) 384–3003, fax: (907)384–3047; or Mr. Calvin Bagley, Center for Environmental Management of Military Lands (CEMML), Colorado State University, Fort Collins, CO 80523–1490; telephone: (970) 491–3324, fax: (970) 491–2713; or *www.cemml.colostate.edu/alaskaeis.*

SUPPLEMENTARY INFORMATION: The proposed action would affect changes to force structure and changes to ranges, facilities, and infrastructure designed to meet objectives of Army Transformation in Alaska. Proposed locations for changes include Fort Richardson, Fort Wainwright, and outlying training areas (e.g., Gerstle River and Black Rapids). Proposed areas of activity changes on Fort Wainwright would include cantonment areas, Tanana Flats Training Area, Yukon Training Area, and Donnelly Training Area (formerly Fort Greely). The proposed action would alter various activities on military and training lands in Alaska. The range of proposed activities include: (1) Fielding weapon systems and equipment (to include a net increase of over 300 Interim Armored

Vehicles and probable additions of several unmanned aerial vehicles); (2) Construction, renovation, and demolition activities to include construction and upgrades to several small to large arms ranges, range complexes and urban training facilities; construction of IBCT vehicle motor pool facilities; construction of troop and equipment cargo and deployment facilities; enhancements to installation information infrastructure and corresponding facilities; upgrades to transportation infrastructure; construction/replacement of barracks and/or housing; and construction of additional administrative/control buildings and structures; (3) Land transactions (acquisition, asset management and disposal); (4) Deployment of forces and specific training for deployment; (5) Training to achieve and maintain readiness to perform assigned missions; (6) institutional matters to include the entire range of diverse day-to-day activities not otherwise accounted for in other activities.

Alternatives include: (1) No Action (existing unit structure and training, no specifically planned activities for transformation); (2) Transformation of the 172nd Infantry Brigade (Separate) to an IBCT using existing ranges facilities and infrastructure as they are now configured; (3) Transformation of the 172nd Infantry Brigade (Separate) to an IBCT and mission sustainment activities including new, additional, or modified ranges, facilities and infrastructure; (4) Total transformation of U.S. Army Alaska (USARAK) mission activities and capabilities, to include the near-term transformation of the 172nd Infantry Brigade (Separate) to an IBCT, in order to meet Objective Force requirements fulfilling the Army Vision of an Army that has the characteristics of being more responsive, deployable, agile, versatile, lethal, survivable, and sustainable; being strategically responsive; and being able to deploy rapidly and being dominant across the full spectrum of operations.

Other alternatives that may be raised during the scoping process will be considered.

Publication of this Notice of Intent does not foreclose consideration of any courses of actions or possible decisions addressed by the U.S. Department of the Army in its Draft Programmatic Environmental Impact Statement (PEIS) for Army Transformation, dated June 2001. No final decisions will be made regarding Transformation in Alaska prior to completion and signature of the Record of Decision for the PEIS for Army Transformation.

Federal, state, and local agencies, organizations, and the public are invited to participate in the scoping process for the completion of this EIS by participating in scoping meetings or submitting written comments. The scoping process will assist the Army in identifying potential impacts to the quality of the human environment. Scoping meetings will be held in Anchorage, Delta Junction, and Fairbanks, Alaska. Notification of the times and locations for the scoping meetings will be published in local newspapers. Written comments will be accepted within 30 days of the scoping meetings. Written comments may be forwarded to Mr. Kevin Gardner at the above address.

Dated: February 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health, OASA(I&E).

[FR Doc. 02–5085 Filed 3–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for Force Transformation of the 2nd Brigade, 25th Infantry Division (Light) Hawaii

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army proposes to implement a range of activities related to force transformation in Hawaii. The primary proposed activities are associated with conversion of the 2nd Brigade, 25th Infantry Division (Light) to an Interim Brigade Combat Team (IBCT), a rapidly deployable, early entry, medium weight force with a decreased logistical footprint. Impacts to the human environment, to include surrounding communities, from restructuring and from enhancing associated ranges, facilities, and infrastructure to meet Army Transformation objectives will be analyzed.

FOR FURTHER INFORMATION CONTACT: *Transformation Information*: Mr. Ronald Borne, (808) 656–2878, extension 1122; by fax (808) 656–8200; by mail at Commander, U.S. Army Garrison, Hawaii, ATTN: APVG–GCT (Borne), Stop 518, Schofield Barracks, Hawaii 96797; or by e-mail: *ronald.borne@schofield.army.mil.*

EIS Information: Mr. Earl Nagasawa, (808) 438–0772; by fax (808) 438–7801; by mail at U.S. Army Corps of Engineers, Honolulu Engineer District, Program and Project Management Division, Attn: CEPOH–PP–E (Nagasawa), Building 252, Fort Shafter, Hawaii 96858–5440; or by e-mail at *earl.nagasawa@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The proposed action would result in changes to various military lands in Hawaii. Categories of proposed activities include: (1) Fielding of new or modified weapon systems, armored vehicles and equipment; (2) Construction activities including erection of buildings, training facilities and infrastructure, and renovation or demolition of buildings and facilities at military installations located on the islands of Oahu and Hawaii; (3) Land transactions (acquisition, asset management and disposal); (4) Deployment of forces and specific training for deployment; (5) Training to achieve and maintain readiness to perform assigned missions; (6) Other actions necessary to support a net increase in troops and vehicles to be assigned to the 2nd Brigade, 25th Infantry Division.

Proposed Action: The Proposed Action specifically entails transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT with proposed changes to ranges, facilities, and infrastructure at military installations in Hawaii to support the IBCT operation and training. Proposed activities include land transactions and construction and use of vehicle wash facilities, training and qualification ranges, installation information infrastructure and facilities enhancements, virtual and live training facilities upgrades, motor pool and range control/maintenance facilities, Army airfield upgrades, an anti-armor course, and an ammunition storage area. The remaining non-IBCT units will also use these new facilities as well as existing infrastructure.

Alternatives: (1) Transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT with a range of supporting activities including new, additional, or modified ranges, facilities and infrastructure; (2) Transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT using existing facilities and infrastructure in Hawaii as they are now configured; (3) No Action (No. transformation to an IBCT in the near term).

Other alternatives that may be raised during the scoping process will be considered.

Publication of this NOI does not foreclose consideration of any courses of actions or possible decisions addressed by the Department of Army in its Draft Programmatic Environmental Impact Statement (PEIS) for Army Transformation, dated June 2001. No final decisions will be made regarding transformation in Alaska prior to completion and signature of the Record of Decision for the PEIS for Army Transformation.

Scoping Process: Federal, state, and local agencies and the public are invited to participate in the scoping process for the completion of this EIS. The scoping process will help the Army in identifying potential impacts to the quality of the human environment. Scoping meetings will be held at various locations on the islands of Oahu and Hawaii. Notification of the times and locations for the scoping meetings will be published in local newspapers. Written comments identifying potential impacts to be analyzed in the EIS will be accepted within 30 days of the scoping meetings. Written comments may be fowarded to Mr. Earl Nagasawa at the above address.

Dated: February 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupation Health), OASA (I&E).

[FR Doc. 02–5084 Filed 3–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 3, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 22, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.,

A0190–9 DAMO

SYSTEM NAME:

Absentee Case Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Personnel Control Facility, U.S. Army Desert Information Point, Building 1481, Fort Knox, KY 40121–5000.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active duty Army, U.S. Army Reserve on active duty or in active duty training status, and Army National Guard personnel on active duty, absent without authority from their place of duty, listed as absentee, and/or who have been designated as a deserter.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'individual's name, Social Security Number, grade'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records Locator Subsystem.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.'

* * * * *

A0190–9 DAMO

SYSTEM NAME:

Absentee Case Files.

SYSTEM LOCATION:

U.S. Army Personnel Control Facility, U.S. Army Desert Information Point, Building 1481, Fort Knox, KY 40121–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army, U.S. Army Reserve on active duty or in active duty training status, and Army National Guard personnel on active duty, absent without authority from their place of duty, listed as absentee, and/or who have been designated as a deserter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, grade, reports and records which document the individual's absence; notice of unauthorized absence from U.S. Army which constitutes the warrant for arrest; notice of return to military control or continued absence in hands of civil authorities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, Army Regulation 190–9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies; Army Regulation 630–10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings; and E.O. 9397 (SSN).

PURPOSE(S):

To enter data in the FBI National Crime Information Center 'wanted person' file; to ensure apprehension actions are initiated/terminated promptly and accurately; and to serve management purposes through examining causes of absenteeism and developing programs to deter unauthorized absences.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records Locator Subsystem.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and the record copy of the Arrest Warrant are maintained in the Official Military Personnel Files; verified desertion data are stored on the Deserter Verification Information System at the U.S. Army Deserter Information Point.

RETRIEVABILITY:

Manually, by name; automated records are retrieved by name, plus any numeric identifier such as date of birth, Social Security Number, or Army serial number.

SAFEGUARDS:

Access is limited to authorized individuals having a need-to-know. Records are stored in facilities manned 24 hours, 7 days a week. Additional controls which meet the physical, administrative, and technical safeguard requirements of Army Regulation 380–19, Information Systems Security, are in effect.

RETENTION AND DISPOSAL:

Automated records are erased when individual returns to military custody, is discharged, or dies. Paper or microform records remain a permanent part of the individual's Official Military Personnel File.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Indianapolis, IN 42649–5301.

Individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Indianapolis, IN 46249–5301.

Individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Unit commander, first sergeants, subjects, witnesses, military police, U.S. Army Criminal Investigation Command personnel and special agents, informants, Department of Defense, federal, state, and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may furnish pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 02–4986 Filed 3–01–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Cost Sharing Cooperative Agreement Applications

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of solicitation for cost sharing cooperative agreement applications.

SUMMARY: The Defense Logistics Agency (DLA) issued a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs). These centers help business firms market their goods and services to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. Notice of the issuance of this SCAA was published in the March 17, 1999 **Federal Register** (Volume 64, Number 51, page 13176). This solicitation governs the submission of applications for calendar years 1999, 2000, 2001, and 2002 and applies to all applications from all eligible entities, including Indian Economic Enterprises and Indian Tribal Organizations. The SCAA has subsequently been amended on March 15, 2000 and February 12, 2002. The current and applicable SCAA is available at the Internet Web site listed below.

Pursuant to Section ''I'' paragraph ''J'' of the SCAA, notice is hereby given that limited additional funds are anticipated to be available in order to accept applications for additional new programs. However, applications will only be accepted from eligible entities that propose programs that will provide service to areas that are not currently receiving service from an existing program. This provision prohibiting applications from new programs proposing to service areas currently receiving service from an existing program is absolute, and the provisions of Section V, paragraph D. of the SCAA do not apply should a new applicant propose to service an area currently receiving service from an existing program.

DATES: On-line submissions of applications for new programs will be available on or about March 20, 2002. The closing date for the submission of applications is April 26, 2002 (see Section IV. paragraph C. regarding timely applications). Applications received after April 26, 2002 will not be accepted.

The SCAA is currently available for review on the Internet Web site: *http://www.dla.mil/scaa/downloads.htm.* Printed copies are not available for distribution.

Eligible entities may only submit an application as outlined in Section IV of the SCAA. In order to comply with the electronic portion of the submission,

applicants must obtain a log in account and password from DLA. To obtain these, applicants must furnish the Grants Officer written evidence that they meet the criteria of an eligible entity as set forth in paragraph 19 of Section II of the SCAA. This information should be mailed or otherwise delivered to: HQ, Defense Logistics Agency, Small and Disadvantaged Business Utilization Office (DB, Room 1127), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information please contact Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Program Manager, DoD Procurement Technical Assistance Program.

[FR Doc. 02–5045 Filed 3–1–02; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center (DMDC), Department of Defense, the Administration for Children and Families (ACF), Department of Health and Human Services and State Public Assistance Agencies (SPAA) for Verification of Continued Eligibility for Public Assistance.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revise computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Department of Health and Human Services (DHHS) and the Department of Defense (DoD) that their records are being matched by computer. The purpose the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

DATES: This proposed action will become effective April 3, 2002, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DHHS and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by ACF and the SPAAs to identify individuals who may be ineligible for public assistance benefits. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all Federal personnel records with SPAA records of those individuals currently receiving public assistance under a Federal benefit program being administered by the State. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy, and would result in additional delay in the eventual recovery of the outstanding debts.

A copy of the computer matching agreement between DHHS and DoD is available upon request. Requests should be submitted to the address caption above or to the Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 19, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Among the Defense Manpower Data Center, the Department of Defense, the Administration for Children and Families Department of Health and Human Service and State Public Assistance Agencies for Verification of Continued Eligibility for Public Assistance

A. Participating Agencies

Participants in this computer matching program are the Department of Health and Human Services (HHS) and the Department of Defense (DoD). The DHHS is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

Upon the execution of this agreement, ACF will disclose public assistance records, obtained from those SPAAs participating in the matching program, to DMDC to identify any Federal personnel, employed, serving, or retired, who are also receiving public assistance under the Medicaid, Temporary Assistance for Needy Families, general assistance and Food Stamp Programs. After matching has been conducted, ACF will provide matched data to the SPAAs who will use this information to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action, as may be authorized by law and regulation.

C. Authority for Conducting the Match

The legal authority for conducting the matching program is contained in

section 1137 of the Social Security Act (42 U.S.C. 1320b–7).

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Federal, but not State, agencies must publish system notices for ''systems of records'' pursuant to subsection (e)(4) of the Privacy Act and must identify ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. The DoD system of records described below contains an appropriate routine use proviso, which permits disclosure of information by DMDC to ACF and the SPAAs.

2. DoD will use personal data from the record system identified as S322.10 DMDC, entitled ''Defense Manpower Data Center Base,'' last published in the **Federal Register** at 66 FR 29552, May 31, 2001.

3. DHHS will be disclosing to DMDC personal data it has collected from the SPAAs. No information will be disclosed from systems of records that ACF operates and maintains. DHHS will be disclosing to the SPAAs personal data it has received from DMDC. The DMDC supplied matched data will be disclosed by ACF pursuant to the DoD routine use.

E. Description of Computer Matching Program

ACF, as the source agency, will collect from the SPAAs electronic files containing the names and other personal identifying data of eligible public assistance beneficiaries. ACF will coordinate the input obtained from the SPAAs and will provide DMDC with similarly formatted electronic data files, which contain the names of individuals receiving public assistance benefits, and which can be processed as a single file. Upon receipt of the electronic files of SPAA beneficiaries, DMDC will perform a computer match using all nine digits of the SSN of the ACF/SPAA file against a DMDC computer database. The DMDC database consists of personnel records of non-postal Federal civilian employees and military members, both active and retired.

The ''hits'' or matches will be furnished by DMDC to ACF, who in turn, will disclose to the SPAAs any matched information pertaining to individuals receiving benefits from that State.

1. The electronic files provided by ACF and the SPAAs will contain data elements of the client's name, SSN, date of birth, address, sex, marital status, number of dependents, information regarding the specific public assistance benefit being received, and such other data as considered necessary and on no more than 10,000,000 public assistance beneficiaries.

2. The DMDC computer database file contains approximately 4.53 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.45 million records of active and retired non-postal Federal civilian employees.

3. DMDC will match the SSN on the ACF/SPAA file by computer against the DMDC database. Matching records, ''hits'' based on SSNs, will produce data elements of the individual's name; SSN; active or retired; if active, military service or employing agency, and current work or home address, and such.

F. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. By agreement between DHHS and DoD, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 02–4987 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance.

Frequency: Quarterly, Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 17,200.

Burden Hours: 41,925.

Abstract: The Lender's Interest and Special Allowance Request (Form 799) is used by approximately 4,300 lenders participating in the Title IV, PART B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5010 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: State Library Agencies Survey, 2000–2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 561.

Abstract: State library agencies (StLAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, direct services to the public, public service hours, type and size of collections, service and development transactions, staffing patterns, and income and expenditures.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5011 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study to Assess Funding, Accountability, and One-Stop Delivery Systems in Adult Education.

Frequency: One time only.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses 220,

Burden Hours: 272.

Abstract: This study is part of the National Assessment of Adult Education authorized by the Workforce Investment Act (WIA), Title II (otherwise known as AEFLA). Findings and recommendations will be used by Congress in considering reauthorization in 2003. OMB approval is requested for two data collection components: (1) A survey of state adult education directors; and (2) site visits to describe state and local implementation of AEFLA and the implications of one-stop service delivery on local adult education programs and providers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5012 Filed 3–1–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 5, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 3, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budge (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Department review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 27, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application Package for the Rural Education Achievement Program (REAP) Small, Rural School Achievement Program.

Abstract: Local Education Agencies (LEAs) will apply for funding under the REAP Small, Rural School Achievement Program. This collection consists of an additional form to the Spreadsheet and Instructions which will address the

second tier of the Department's strategy for completing the funding process. The additional form will serve as the application package for LEAs under the REAP Small, Rural Schools Achievement Program.

Additional Information: The Department of Education requests Emergency Clearance for the information collection entitle Application for the Small, Rural School Achievement Program because a normal clearance is likely to cause a statutory deadline to be missed. The statute requires the Department to make direct grant awards to all eligible LEAs by July 1. With an estimated 4,500 awards to be made by July 1, the Department needs a considerable amount of time to inform potential applicants of the availability of funds and the award process, and to conduct the funding process.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Response: 4,552.

Burden Hours: 3,000.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov.* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5123 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. Childcare for young children with disabilities and their families will be the topic of this FICC meeting. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on March 13, 2002 in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC, 20202.

DATE AND TIME: FICC Meeting: Thursday, March 14, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Departmental Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Dated: February 26, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5110 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No.DE–PS26–02NT41446 entitled ''Development of Technologies and Capabilities for Natural Gas Infrastructure Reliability.'' This solicitation supports the Natural Gas Infrastructure Reliability product line which is part of the Department of Energy's Strategic Center for Natural Gas. This solicitation competitively seeks cost-shared applications for energy research and development (R&D) related activities that promote the efficient and sound production and use of fossil fuels (coal, natural gas, and oil). The primary purpose of the solicitation is to maintain and enhance the integrity and reliability of the natural gas transmission and distribution pipeline infrastructure. Research directed specifically towards expansion of the pipeline and major references to expansion will be discouraged.

DATES: Potential applicants are required to submit a brief, not to exceed seven pages, pre-application. The deadline for submissions of pre-applications and comprehensive applications will be identified in the solicitation. No comprehensive application will be evaluated unless a pre-application has been received and considered by the DOE. The review process for the pre-

applications will be limited to a programmatic review that will result in encouraging or discouraging submission of a comprehensive application. However, discouraged applicants are not prohibited from submitting full applications. A response to the pre-applications will be communicated to the applicant within two weeks after the closing date for the pre-application. All pre-applications must be submitted through the Industry Interactive Procurement System (IIPS) system in accordance with the instructions in the solicitation. The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at http://e-center.doe.gov on or about March 1, 2002. The deadline for submission of pre-applications and comprehensive applications will be identified in the solicitation. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's website at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Dona G. Sheehan, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, E-mail Address: sheehan@netl.doe.gov, Telephone Number: 412/386–5918.

SUPPLEMENTARY INFORMATION: In an effort to determine the needs of the gas infrastructure industry, NETL sponsored visioning and road mapping workshops allowing representatives from natural gas organizations and industries to define and prioritize research directions necessary to maintain and expand the natural gas infrastructure. The input from these workshops has been summarized in a report entitled ''Pathways for Enhanced Integrity, Reliability and Deliverability'' and is publicly available on the NETL Website at *http://www.netl.doe.gov/scng/publications/naturalg.pdf.* Applicants are encouraged to review the information contained in this document.

To support the pipeline infrastructure, NETL is requesting R&D applications which will result in the development of technology which supports the current and future natural gas infrastructure. The solicitation will focus on research in the following areas: (1) Transmission systems, (2) distribution systems and (3) technologies which clearly affect both areas. Applicants may propose research in any area which supports the industries needs; however, the proposed work must address, but not necessarily limited to, research needs identified in the visioning and road mapping workshops. In addition to the proposed R&D effort, applicants will be required to include a discussion of the costs and benefits to ensure that the technology being developed has the potential to result in a useful commercial product which will be utilized by the natural gas infrastructure industry. DOE anticipates issuing cost-shared financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards will be made. Multiple awards are anticipated. Approximately $1.5 million of DOE funding is planned.

Applications submitted by, or on behalf of: (1) Another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management and Operating (M&O) contractor will not be eligible for an award under this solicitation. An application may include performance of work by a DOE M&O contractor but that work must not exceed 15% of the total contract value. If a project which includes National Laboratory participation is approved for funding, DOE intends to make an award to the applicant for its portion of the effort and to provide direct funding for the National Laboratories portion of the effort as a Field Work Proposal (FWP).

DOE has determined that a minimum cost share of 25 percent of the total project cost is required for this solicitation. Details of the cost sharing requirement and the specific funding levels will be contained in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on February 21, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–5067 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, April 4, 2002, 9 a.m.–5 p.m., Friday, April 5, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel/Hanford House, 802 George Washington Way, Richland, WA (509–946–7611).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, April 4, 2002

- Introduction of Draft Advice on the Tri-Party Agreement Draft Change Package for the Central Plateau Project
- Introduction of Draft Advice on the Hanford Institutional Controls Plan
- Discussion of Top-to-Bottom Review and Introduction of Draft Advice
- Discussion on FY03 and FY04 Budgets
- Overview of Hanford Exposure Scenario (aka Ad Hoc Task Force) Workshop and Introduction of Draft Advice on the Risk Framework for the Central Plateau

Friday, April 5, 2002

Adoption of the following pieces of draft advice:

- Tri-Party Agreement Draft Change Package for the Central Plateau Project
- Institutional Controls Plan
- Risk Framework for the Central Plateau Committee Updates
- Hanford Solid Waste Draft Environmental Impact Statement (EIS)

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on February 27, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5064 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 27, 2002, 1 p.m.–9 p.m.

ADDRESSES: Office of Los Alamos Site Operations, Room 100, 528 35th Street, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1–5 p.m.—Public Comment
—Recruitment/Membership
—Report from Chair—Groundwater Statement
—Report from Staff
—Report from DOE
—Report from Committees
5–6 p.m.—Dinner Break
6–9 p.m.—Update on Waste Removal at LANL
—Recommendations to DOE
—Public Comment
Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org*.

Issued at Washington, DC, on February 27, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5065 Filed 3–1–02; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 21, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Approve Minutes; Review Agenda
6:10 p.m.—DDFO's Comments; Action Items; Budget Update; ES&H Issues; Board Recommendation Status
6:30 p.m.—Ex-officio Comments
6:40 p.m—Public Comments and Questions
6:50 p.m.—Task Force and Subcommittee Reports

- Groundwater Operable Unit
- Budget, Finance & Administration
- Surface Water Operable Unit
- Community Concerns
- Waste Task Force
- Public Involvement

- Long Range Strategy/Stewardship
- Nomination and Membership

7:35 p.m.—Break

7:50 p.m.—Administrative Issues

- Review of Work Plan
- Review of Next Agenda
- Federal Coordinator Comments
- Retreat Plans

8:05 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on February 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5066 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–62–000]

California Electricity Oversight Board, Complainant, v. Sellers of Energy and Capacity Under Long-Term Contracts With the California Department of Water Resources, Respondents; Notice of Complaint

February 26, 2002.

Take notice that on February 25, 2002, the California Electricity Oversight Board (Complainant) filed a complaint against specified sellers of long term power contracts to the California Department of Water Resources (Respondents) alleging that the prices, terms, and conditions of such contracts are unjust and unreasonable and not in the public interest. Complainant alleges that Respondents obtained the prices, terms, and conditions in the contracts through the exercise of market power, in violation of the Federal Power Act, and that the prices, terms, and conditions are causing injury to the citizens and ratepayers of California and the State's economy.

Copies of this filing were served upon Respondents and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002 . Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5054 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–159–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

February 26, 2002.

Take notice that on February 15, 2002, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Effective November 1, 2001

Third Revised Sheet No. 39

Effective February 16, 2002

Original Sheet Nos. 1503–1999

DTI states that the purpose of this filing is to update the rates and fuel retention percentages shown in DTI's currently effective FERC Gas Tariff, Sheet No. 39, pertaining to overrun charges.

DTI states that a copy of its transmittal letter and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5059 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–94–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

February 26, 2002.

Take notice that on February 21, 2002, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP02–94–000 a request pursuant to Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211(b)) for authorization to construct and operate a delivery point located in Pinal County Arizona, under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''Rims'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

El Paso states that the new delivery point will permit the interruptible transportation and delivery of natural gas for Abbott Laboratories L.L.C. (Abbott Labs). Abbott Labs, it is said, utilizes natural gas to fuel boilers in its manufacturing and processing plant located in Pinal County, Arizona. Abbott Labs, it is further said, has requested natural gas service directly from El Paso for its manufacturing and processing plant which is currently served by Southwest Gas Corporation.

El Paso asserts that El Paso's environmental analysis supports the conclusion that the construction and operation of the proposed delivery point will not be a major Federal action significantly affecting the human environment.

El Paso states that the construction and operation of the Abbott Labs delivery point is not prohibited by El Paso's existing Tariff . El Paso states further that the estimated cost of the proposed facilities is $195,150 and that Abbott Labs has agreed to reimburse El Paso for the cost of the construction.

Any questions regarding the application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80904, phone: (719) 520–3788.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5055 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–6–002]

Enogex Inc.; Notice of Compliance Filing

February 26, 2002.

Take notice that on February 13, 2002, Enogex Inc. (Enogex) tendered for filing a copy of its fuel percentage calculation for 2002.

Enogex states that the purpose of its filing is to comply with the settlement in Docket Nos. PR01–6–000 and PR01–6–001, approved by the Commission by a letter order dated January 30, 2002, which requires Enogex to file its fuel percentage for 2002 within 30 days of the order accepting the settlement.

Enogex further states that it has served copies of this filing upon all parties in Docket No. PR01–6–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5058 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–60–000]

Public Utilities Commission of the State of California, Complainant, v. Sellers of Long Term Contracts to the California Department of Water Resources, Respondents; Notice of Complaint

February 25, 2002.

Take notice that on February 25, 2002, the Public Utilities Commission of the State of California (Complainant) submitted a complaint against specified sellers of long term contracts to the California Department of Water Resources (Respondents) alleging that the prices, terms, and conditions of such contracts are unjust and unreasonable and, to the extent applicable, not in the public interest. Complainant alleges that Respondents obtained the prices, terms, and conditions in the contracts through the exercise of market power, in violation of the Federal Power Act, and that Respondents' actions are causing injury to the citizens and ratepayers of California on whose behalf the CPUC is statutorily entitled to act.

Copies of this filing were served upon Respondents and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5053 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–52–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 26, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Florida Power & Light Company, Tampa Electric Company

[Docket No. EC02–52–000]

Take notice that on February 22, 2002, Florida Power & Light Company (FPL) and Tampa Electric Company (TECO) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act for a transfer from FPL to TECO of a 13.55 mile long transmission line located in Hillsborough County, Florida.

Comment Date: March 15, 2002

2. B.L. England Power LLC

[Docket No. EG02–80–000]

Take notice that on February 22, 2002, B.L. England Power LLC (BL England) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 finding that allowing the BL England facility to be an eligible facility is in the public interest; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

3. Deepwater Power LLC

[Docket No. EG02–81–000]

Take notice that on February 22, 2002, Deepwater Power LLC (Deepwater) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 finding that allowing the Deepwater facility to be an eligible facility is in the public interest; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

4. Keystone Power LLC

[Docket No. EG02–82–000]

Take notice that on February 22, 2002, Keystone Power LLC (Keystone) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 with respect to Keystone's purchase of the Atlantic City Electric Company interest in the Keystone facility; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

5. Conemaugh Power LLC

[Docket No. EG02–83–000]

Take notice that on February 22, 2002, Conemaugh Power LLC (Conemaugh) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 with respect to Conemaugh's purchase of the Atlantic City Electric Company interest in the Conemaugh facility; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

6. Southeast Chicago Energy Project, LLC

[Docket No. EG02–97–000]

Take notice that on February 21, 2002, Southeast Chicago Energy Project, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of Exempt Wholesale Generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will own and sell electric energy from six combustion turbines with a combined generating capacity of 350 MW and certain limited interconnection facilities located in Calumet, Illinois.

Comment Date: March 19, 2002

7. Southern Company Services, Inc.

[Docket Nos. ER00–1608–001 and ER01–2166–001]

Take notice that on February 19, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies) made an informational filing regarding their intent to recover from Tenaska Alabama Partners, LP (Tenaska), pursuant to an interconnection agreement between Tenaska and Southern Companies, and from Duke Energy North American LLC (Duke), pursuant to an interconnection agreement between DENA and Southern Companies, Southern Companies' actually incurred costs associated with line outages that were necessary for Tenaska and DENA to interconnect certain of their generating facilities to Southern Companies' transmission system. In addition, Southern Companies filed supporting informational materials regarding their policies and procedures for assigning cost responsibility to interconnection customers for expenses related to transmission line outage.

Comment Date: March 12, 2002

8. San Diego Gas & Electric Company

[Docket No. ER02–635–001]

Take notice that on February 21, 2002, San Diego Gas & Electric (SDG&E) tendered for filing an errata related to its change in rates for the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff (TO Tariff). This charge was filed December 28, 2001 in Docket No. ER02–635–000. The effect of this rate change is to

increase rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-Controlled Grid owned by SDG&E. This errata does not change the rates submitted by SDG&E on December 28, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and other interested parties.

Comment Date: March 13, 2002.

9. Cinergy Services, Inc.

[Docket No. ER02–1047–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) and Louisville Gas & Electric Company requests a cancellation of Service Agreement No. 77, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 22, 2002.

Comment Date: March 13, 2002.

10. Cineregy Services, Inc.

[Docket No. ER02–1048–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Louisville Gas and Electric Company/ Kentucky Utilities Company.

Cinergy and FPL are requesting an effective date of February 22, 2002.

Comment Date: March 13, 2002.

11. Cinergy Services, Inc.

[Docket No. ER02–1049–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) and Kentucky Utilities Company, requests a cancellation of Service Agreement No. 73, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 22, 2002.

Comment Date: March 13, 2002.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER02–1050–000]

Take notice that on February 19, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Rainbow Energy Marketing Corporation (Customer). ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of February 4, 2002.

Comment Date: March 12, 2002.

13. Alliant Energy Corporate Services Inc.

[Docket No. ER02–1051–000]

Take notice that on February 19, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Village of Albany, Illinois (Customer). ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of January 21, 2002.

Comment Date: March 12, 2002.

14. West Georgia Generating Company, L.L.C.

[Docket No. ER02–1052–000]

Take notice that on February 20, 2002, West Georgia Generating Company, L.L.C. (West Georgia) tendered for filing a revised tariff sheet to reflect the correct name of the entity under the rate schedule and remove a restriction on West Georgia's ability to engage in transactions with the affiliate of the former owner of the facility. West Georgia also seeks to terminate the obsolete Codes of Conduct associated with the former owner. West Georgia requests that the tariff changes become effective upon the date of the filing, February 20, 2002.

Comment Date: March 13, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–1053–000]

Take notice that on February 21, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No.1 to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and the Western Area Power Administration Desert Southwest Region (WAPA). The ISO requests that the agreement be made effective as of January 18, 2002.

The ISO states that this filing has been served on the persons listed in the service list for Docket No. ER98–3708–000.

Comment Date: March 13, 2002.

16. NRG Northern Ohio Generating LLC, NRG Ashtabula Generating LLC, NRG Lake Shore Power LLC

[Docket No. ER02–1054–000, ER02–1055–000, and ER02–1056–000]

Take notice that on February 21, 2002, NRG Northern Ohio Generating LLC (NRG Northern Ohio), NRG Ashtabula Generating LLC and NRG Lake Shore Generating LLC (together the Applicants), limited liability corporations organized under the laws of the State of Delaware, filed under section 205 of the Federal Power Act, requests that for each of the Applicants the Commission (1) accept for filing proposed market-based FERC Rate Schedules; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under their appropriate FERC Rate Schedules; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment Date: March 13, 2002.

17. PJM Interconnection, L.L.C.

[Docket No. ER02–1058–000]

Take notice that on February 21, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following two executed agreements: (1) one network integration transmission service agreement for Reliant Energy Services, Inc. (Reliant); and (2) one network integration transmission service agreement for Allegheny Electric Cooperative, Inc. (Allegheny Electric).

PJM requested a waiver of the Commission's notice regulations to permit effective date of February 1 for the agreements, which is within 30 days of the date of this filing. Copies of this filing were served upon Reliant and Allegheny Electric, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: March 13, 2002.

18. WPS Resources Corporation.

[Docket No. ER02–1059–000]

Take notice that on February 21, 2002, WPS Resources Corporation (WPSR) submitted revised market-based rate tariffs for its marketing subsidiaries, including WPS Power Development, Inc., WPS Energy Services, Inc., Mid-American Power LLC, Sunbury Generation, LLC, WPS New England Generation, Inc. (formerly, PDI New England, Inc.), WPS Canada Generation, Inc. (formerly, PDI Canada, Inc.), WPS Westwood Generation, LLC and Combined Locks Energy Center, LLC. WPSR requests that the revised tariffs become effective on February 22, 2002, the day after this filing.

This filing has been served on the market-based rate customers of the WPSR subsidiaries.

Comment Date: March 13, 2002.

19. Duke Energy Southaven, LLC

[Docket No. ER02–1060–000]

Take notice that on February 21, 2002, Duke Energy Southaven, LLC (Duke Southaven) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act proposed revisions to its FERC Electric Tariff No. 1 (Tariff).

Duke Southaven requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 14, 2002, the date on which Duke Southaven commenced the sale of test energy. Duke Southaven commits to delay billing under its tariff until 60 days after the date this amendment was filed.

Comment Date: March 13, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5052 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–000, Idaho]

Atlanta Power Station, Notice of Meeting

February 26, 2002.

A telephone conference will be convened by staff of the Office of Energy Projects on March 18, 2002, at 1 p.m. eastern standard time. The purpose of the meeting is to discuss Section 18 prescriptions in the November 10, 1999, letter from the U.S. Department of the Interior, Fish and Wildlife Service.

Any person wishing to be included in the telephone conference should contact Gaylord W. Hoisington at (202) 219–2756 or e-mail at gaylord.hoisington@ferc.fed.us. Please notify Mr. Hoisington by March 12, 2002, if you want to be included in the telephone conference.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5057 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA02–2–000]

Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; Notice of Docket Designation

February 26, 2002.

On February 13, 2002, the Commission issued an order entitled ''Order Directing Staff Investigation.'' That order was issued under the caption ''Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices,'' but did not have a docket designation. The proceeding that the February 13th order initiated has now been designated as Docket No. PA02–2–000. The February 13, 2002 order is to be regarded as having been issued in this docket.

Public orders, notices, information requests, and other documents issued in Docket No. PA02–2–000 will be posted on the Commission's web site, *http://www.ferc.gov.* Parties responding to information requests issued in this proceeding may request privileged treatment pursuant to 18 CFR 388.112.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5056 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–6]

Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* Under the Safe Drinking Water Act; Agency Information Collection: Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: Today's notice invites comment on the U.S. Environmental Protection Agency's (EPA's) proposed Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act (Lab QA Program) (Section I). EPA also plans to submit to the Office of Management and Budget (OMB) for review and approval an Information Collection Request (ICR) associated with information collections under the proposed Lab QA Program (Section II). EPA is requesting comments on specific aspects of the proposed Lab QA Program and the ICR. Finally, EPA solicits comments on its intention to seek an emergency clearance from OMB to begin collecting data from laboratories that are interested in participating in the Lab QA Program prior to OMB's final approval of the ICR.

DATES: The Agency requests comments on today's notice. Comments must be received or post-marked by midnight May 3, 2002. If EPA does not receive adverse comments on or before April 3, 2002 regarding EPA's request for an emergency clearance, the Agency intends to seek a 90-day emergency clearance from OMB to begin collecting data from laboratories that are interested in participating in the Lab QA Program.

ADDRESSES: Please send an original and three copies of your written comments and enclosures (including references) to the W–01–17 Comment Clerk, Water Docket (MC–4101), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Due to the uncertainty of mail delivery in the Washington, DC area, in order to ensure that all comments are received please send a separate copy of your comments

via electronic mail (e-mail) to Mary Ann Feige, EPA, Office of Ground Water and Drinking Water, *feige.maryann@epa.gov*, or mail to the attention of Mary Ann Feige, EPA, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., Room EB57, Washington, DC 20460. Please make certain to reference EPA ICR No. 2052.02 and OMB Control No. 2040–0229.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sharon Gonder at EPA by phone at (202) 564–5256 or by email at *gonder.sharon@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2052.02. For technical inquiries, contact Mary Ann Feige, EPA, Office of Ground Water and Drinking Water, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268, fax number, (513) 569–7191, e-mail address, *feige.maryann@epa.gov*.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Individuals who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–01–17. Comments and data will also be accepted on disks in WP5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Availability of Docket

The record for this notice has been established under docket number W–01–17, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, EPA Waterside Mall, 401 M Street, SW., Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Section I: Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium Under the Safe Drinking Water Act

In September 2000, the Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee (Committee) signed an Agreement in Principle (Agreement) (65 FR 83015, Dec. 29, 2000) (EPA, 2000) with consensus recommendations for two future drinking water regulations: The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants and Disinfection Byproducts Rule. The LT2ESWTR is to address risk from microbial pathogens, specifically *Cryptosporidium*, and the Stage 2 DBPR is to address risk from disinfection byproducts. The Committee recommended that the LT2ESWTR require public water systems (PWSs) to monitor their source water for *Cryptosporidium* using EPA Method 1622 or EPA Method 1623. Additional *Cryptosporidium* treatment requirements for PWSs would be based on the source water *Cryptosporidium* levels. EPA intends to take into account the Committee's advice and recommendations embodied in the Agreement when developing the regulations.

To support *Cryptosporidium* monitoring under the LT2ESWTR, the Committee Agreement recommended that ''compliance schedules for the LT2ESWTR * * * be tied to the availability of sufficient analytical capacity at approved laboratories for all large and medium-size affected systems to initiate *Cryptosporidium* and E.coli monitoring * * * '' (65 FR 83015, Dec. 29, 2000) (EPA, 2000). Further, the Agreement recommended that *Cryptosporidium* monitoring by large and medium systems begin within six months following rule promulgation. Given the time necessary for EPA to approve a sufficient number of laboratories to assure adequate capacity for LT2ESWTR monitoring, EPA would need to begin laboratory evaluation prior to promulgation of the rule in order to accommodate such an implementation schedule.

Another factor that warrants initiation of the Lab QA Program prior to promulgation of the LT2ESWTR is grandfathering of monitoring data. The Agreement recommends that systems with ''historical'' *Cryptosporidium* data that are equivalent to data that would be collected under the LT2ESWTR be afforded the opportunity to use those ''historical'' (grandfathered) data in lieu of collecting new data under LT2ESWTR. EPA intends to propose such grandfathering provisions in the LT2ESWTR. If EPA indicates that laboratories meet the criteria in the Lab QA Program described today prior to finalizing the LT2ESWTR, systems could develop monitoring data prior to the LT2ESWTR in anticipation of using it as grandfathered data.

EPA's Office of Ground Water and Drinking Water plans to request from OMB an emergency clearance that would enable expeditious implementation of a voluntary Lab QA Program to support *Cryptosporidium* monitoring under the LT2ESWTR. As such, the Agency could begin to evaluate laboratories that can reliably measure for *Cryptosporidium* using EPA Method 1622 and Method 1623. During the effective period of the emergency clearance, EPA intends to submit to OMB for review and approval a final ICR in order to continue data collection for the Lab QA Program.

As part of today's notice, EPA is inviting comment on the Lab QA Program. Under the Lab QA Program, EPA would evaluate labs on a case-by-case basis through evaluating their capacity and competency to reliably measure for the occurrence of *Cryptosporidium* in surface water using EPA Method 1622 or EPA Method 1623. The intent of this notice is not to propose establishing the Lab QA Program through a rulemaking. Rather, the criteria described in section I.C. are intended to provide guidance to laboratories that are interested in participating in the Lab QA Program.

EPA has not yet proposed rulemaking on use of such ''historical'' data nor on the methods themselves under the LT2ESWTR. As noted above, EPA intends to propose allowing systems to use equivalent ''historical'' data in lieu of collecting new data. EPA anticipates the data generated by labs which meet the evaluation criteria would be very high quality, thus increasing the likelihood that such data would warrant consideration as acceptable ''grandfathered'' data. However, lab evaluation would not guarantee that data generated will be acceptable as ''grandfathered'' data, nor would failure to meet evaluation criteria necessarily preclude use of ''grandfathered'' data. For these reasons, EPA is not establishing the Lab QA Program through rulemaking, but rather as a discretionary and voluntary program under the Safe Drinking Water Act, section 1442 (42 USC 300j–1(a)).

A. What Is the Purpose of the Laboratory Quality Assurance Evaluation Program?

The purpose of the Lab QA Program is to identify laboratories that can

reliably measure for the occurrence of *Cryptosporidium* in surface water. Existing laboratory certification programs do not include *Cryptosporidium* analysis. This program is designed to assess and confirm the capability of laboratories to perform *Cryptosporidium* analyses. The program will assess whether laboratories meet the recommended personnel and laboratory criteria in today's notice. This evaluation program is voluntary for laboratories. In the LT2ESWTR, however, EPA intends to require systems to use approved (or certified) laboratories when conducting *Cryptosporidium* monitoring under the LT2ESWTR.

B. Why Has EPA Selected Methods 1622 and 1623 as the Basis for Determining the Data Quality of Laboratories That Measure for *Cryptosporidium*?

EPA Method 1622 and EPA Method 1623 were developed as improved alternatives to the ICR Protozoan Method (EPA, 1996). EPA validated Method 1622 for the determination of *Cryptosporidium* in ambient water in August 1998 and distributed an interlaboratory validated draft method in January 1999. In addition, EPA validated Method 1623 for the simultaneous determination of *Cryptosporidium* (and *Giardia*) in ambient water in February 1999 and distributed a validated draft method in April 1999.

In April 2001, EPA revised and updated Method 1622 (EPA–821–R–01–026) (EPA, 2001a) and Method 1623 (EPA–821–R–01–025) (EPA, 2001b) based on the following: laboratory feedback, the development of equivalent filters and antibodies for use with the methods, and method performance data generated during the ICR Supplemental Surveys (EPA, 2001e). The results of these studies are documented in the Method 1622 interlaboratory validation study report (EPA–821–R–01–027) (EPA, 2001c) and the Method 1623 interlaboratory validation study report (EPA–821–R–01–028) (EPA, 2001d).

C. What Criteria Should I Use To Determine if My Laboratory Should Apply?

A laboratory that is interested in participating in the Lab QA Program currently should be operating in accordance with its QA plan (developed by the laboratory) for *Cryptosporidium* analyses. In addition, an interested laboratory should demonstrate its capacity and competency to analyze *Cryptosporidium* using the following recommended criteria:

1. Recommended Personnel Criteria

Principal Analyst/Supervisor (one per laboratory) should have:

- BS/BA in microbiology or closely related field.
- A minimum of one year of continuous bench experience with *Cryptosporidium* and immunofluorescent assay (IFA) microscopy.
- A minimum of six months experience using EPA Method 1622 and/or EPA Method 1623.
- A minimum of 100 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 50 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method (EPA, 1996)) for the specific analytical procedure they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed principal analyst/supervisor.

Other Analysts (no minimum number of analysts per laboratory) should have:

- Two years of college (or equivalent) in microbiology or closely related field.
- A minimum of six months of continuous bench experience with *Cryptosporidium* and IFA microscopy.
- A minimum of three months experience using EPA Method 1622 and/or EPA Method 1623.
- A minimum of 50 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 25 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method) for the specific analytical procedures they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed other analysts.

Technician(s) (no minimum number of technicians per laboratory) should have:

- Three months experience with the specific parts of the procedure they will be performing.
- A minimum of 50 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 25 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method) for the specific analytical procedures they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed technician(s).

2. Recommended Laboratory Criteria

- Appropriate instrumentation as described in EPA Methods 1622 and 1623 (EPA, 2001a,b).
- Equipment and supplies as described in EPA Methods 1622 and 1623 (EPA 2001a, 2001b).
- Detailed laboratory standard operating procedures for each version of the method that the laboratory will use to conduct the *Cryptosporidium* analyses.
- Laboratory should provide a current copy of the table of contents of their laboratory's quality assurance plan for protozoa analyses.
- EPA Method 1622 or EPA Method 1623 initial demonstration of capability (IDC) data, which include precision and recovery (IPR) test results and matrix spike/matrix spike duplicate (MS/MSD) test results for *Cryptosporidium.* EPA intends to evaluate the IPR and MS/MSD results against the performance acceptance criteria in the April 2001 version of EPA Method 1622 or EPA Method 1623 (EPA, 2001a, 2001b).

D. How Can I Obtain an Application Package?

After the OMB clearance described above, EPA plans to make applications available on EPA's website at *www.epa.gov/safewater/cryptolabapproval.html.* Completed applications should be sent to: EPA's Laboratory Quality Assurance Evaluation Program Coordinator, c/o Dyncorp I&ET, Inc., 6101 Stevenson Avenue, Alexandria, VA 22304–3540. If a laboratory does not have access to the Internet, the laboratory may contact Dyncorp I&ET, Inc. to request an application package.

E. If I Demonstrate My Laboratory's Capacity and Competency According to the Personnel and Laboratory Criteria, What Do I Do Next?

After the laboratory submits to EPA an application package including supporting documentation, EPA intends to conduct the following steps to complete the process:

1. Upon receipt of a complete package, EPA contacts the laboratory for follow-up information and to schedule participation in the performance testing program.

2. EPA sends initial proficiency testing (IPT) samples to the laboratory (unless the laboratory has already successfully analyzed such samples under EPA's Protozoan PE program). IPT samples packets consist of eight spiked samples shipped to the laboratory within a standard matrix.

3. The laboratory analyzes IPT samples and submits data to EPA.

4. EPA conducts an on-site evaluation and data audit.

5. The laboratory analyzes ongoing proficiency testing (OPT) samples three

times per year and submits the data to EPA. OPT sample packets consist of three spiked samples shipped to the laboratory within a standard matrix.

6. EPA contacts laboratories by letter within 60 days of their laboratory on-site evaluation to confirm whether the laboratory has demonstrated its capacity and competency for participation in the program.

F. My Laboratory Has Already Submitted Initial Demonstration of Capability (IDC) and Initial Performance Testing (IPT) Data As Part of the EPA Protozoan Performance Evaluation (PE) Program. Do I Have To Perform This Demonstration Testing Again?

No. If a laboratory currently participates in the EPA Protozoan PE Program and acceptable IDC and IPT data have already been submitted (for the version of the method that the laboratory will use to conduct *Cryptosporidium* analyses), EPA would not expect the laboratory to repeat IDC and IPT analyses.

Section II: Paperwork Reduction Act

The information collection requirements in this notice have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 2052.02) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; EPA (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *auby.susan@epamail.epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Since the EPA would solicit information in application packages, including supporting documentation, analytical data, and other pertinent information from laboratories that are interested in participating in the voluntary Lab QA Program, the Agency is required to submit an ICR to OMB for review and approval. Entities potentially affected by this action include public and private laboratories that wish to be evaluated to determine if they can reliably measure for the occurrence of *Cryptosporidium* in surface waters that are used for drinking water sources using EPA Method 1622 or Method 1623.

The burden estimate for the Lab QA Program information collection includes all the burden hours and costs required for gathering information, and developing and maintaining records associated with the Lab QA Program. The annual public reporting and recordkeeping burden for this collection of information is estimated for a total of 60 respondents and an average 78 hours per response for a total of 4,676 hours at a cost of $123,650. This estimate assumes that laboratories participating in the Lab QA program have the necessary equipment needed to conduct the analyses. Therefore, there are no start-up costs. The estimated total annual capital costs is $0.00. The estimated Operation and Maintenance (O&M) costs is $133,880.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; EPA (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after March 4, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by April 3, 2002. The final ICR approval notice will respond to any OMB or public comments on the information collection requirements contained in today's notice.

References

EPA. 1996. ICR Microbial Laboratory Manual. Office of Research and Development. EPA/600/R–95/178. April 1996.

EPA. 2000. Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee Agreement in Principle. **Federal Register**. Vol. 65, pp. 83015–83024. December 29, 2000.

EPA. 2001a. EPA Method 1622: Cryptosporidium in Water by Filtration/IMS/FA. Office of Water. Washington, DC 20460. EPA–821–R–01–026. April 2001.

EPA. 2001b. EPA Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA. Office of Water. Washington, DC 20460. EPA–821–R–01–025. April 2001.

EPA. 2001c . Interlaboratory Validation Study Results for Cryptosporidium Precision and Recovery for EPA Method 1622. Office of Water. Washington, DC 20460. EPA–821–R–01–027. April 2001.

EPA. 2001d. Interlaboratory Validation Study Results for the Determination of *Cryptosporidium* and *Giardia* Using EPA Method 1623. Office of Water. Washington, DC 20460. EPA–821–R–01–028. April 2001.

EPA. 2001e. Implementation and Results of the Information Collection Rule Supplemental Surveys. Office of Water. Washington, DC 20460. EPA–815–R–01–003. February 2001.

Dated: February 25, 2002.

Diane C. Regas,

Acting Assistant Administrator, Office of Water.

[FR Doc. 02–5078 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy of the Export-Import Bank of the United States

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance $35 million of equipment on behalf of U.S. exporters to an automotive crankshaft finisher in Mexico. The U.S. exports will enable the Mexican buyer to increase finished automotive crankshaft output by approximately 700,000 crankshafts per year. Some of this new production will be exported to the United States.

Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW, Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helen S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–4976 Filed 3–1–02; 8:45 am]

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy of the Export-Import Bank of the United States

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance $12.5 million of equipment, and other goods and services on behalf of U.S. exporters to a buyer in South Africa. The U.S. exports will enable the South African company to increase phosphoric acid output by 330,000 tons per year, of which approximately 257,000 tons may be converted into granular phosphate fertilizer. This new production may be exported to Australia, Brazil, India, and to countries in Africa.

Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–4975 Filed 3–1–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1402–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1402–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 6, 2002:

Allen, Anderson, Barber, Bourbon, Butler, Chautauqua, Coffey, Cowley, Crawford, Douglas, Elk, Franklin, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Osage, Sumner, Wilson, and Woodson for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5039 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–Kansas–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1402–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 15, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5040 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1403–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1403–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 13, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5041 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1403–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1403–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 6, 2002:

Cedar, Knox, Lewis and Marion Counties for Individual and Public Assistance.
Barton, Clark, Daviess, DeKalb, Ralls and Scotland Counties for Individual Assistance.
Chariton, Clinton, Henry, Macon, Monroe, St. Clair, Shelby and Vernon Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5042 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 1, 2002:

Alfalfa, Beckham, Blaine, Caddo, Custer, Dewey, Grant, Kay, Logan, Major, Noble, Oklahoma, Pawnee, Roger Mills, and Washington Counties for Categories C through G under Public Assistance (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance at 75 percent Federal funding under Public Assistance and Individual Assistance).
Grady, Greer, Jackson, and Kiowa for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5037 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 11, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5038 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Dennis Frank Doelitzsch, Marion, Illinois; to retain voting shares of Midwest Community Bancshares, Inc., Marion, Illinois, and thereby indirectly retain voting shares of The Bank of Marion, Marion, Illinois, and The Egyptian State Bank, Carrier Mills, Illinois.

2. John Layton Harlin, Gainesville, Missouri; to retain voting shares of Century Bancshares, Inc., Gainesville, Missouri, and thereby indirectly retain voting shares of Century Bank of the Ozarks, Gainesville, Missouri.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Thelen Family Limited Liability Limited Partnership 2, Baxter, Minnesota; to acquire voting shares of American Bancorporation of Minnesota, Inc., Brainerd, Minnesota, and thereby indirectly acquire voting shares of American National Bank of Minnesota, Brainerd, Minnesota.

Board of Governors of the Federal Reserve System, February 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5095 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Docking Bancshares, Inc., Arkansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Union State Bank, Arkansas City, Kansas.

Board of Governors of the Federal Reserve System, February 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5096 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 14, 2002. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace level of the Martin Building. **For security purposes, anyone planning to attend the meeting should pre-register no later than Tuesday, March 12 by sending their name and affiliation to cca-cac@frb.gov. Attendees must also present a photo identification to enter the building.**

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the various consumer financial services laws, and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Mortgage Disclosure Act - Discussion of issues related to recent amendments to Regulation C, which implements the Home Mortgage Disclosure Act.

Equal Credit Opportunity Act - Discussion of issues raised by proposed rules in the review of Regulation B, which implements the Equal Credit Opportunity Act.

Community Reinvestment Act - Discussion of issues identified in connection with the current review of Regulation BB, which implements the Community Reinvestment Act.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, February 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–5051 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through June 30, 2005, the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Gramm-Leach-Bliley Act Privacy Rule (''GLBA Rule'' or ''Rule''). That clearance expires on June 30, 2002.

DATES: Comments must be submitted on or before May 3, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''GLBA Rule: Paperwork Comment.'' Comments in electronic form should be sent to: *GLBpaperwork@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Loretta Garrison, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Room S–4429, 601 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3043.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. (44 U.S.C. 3502(3), 5 CFR 1320.3(c)). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the GLBA Rule, 16 CFR Part 313 (OMB Control Number 3084–0121).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly label ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *GLBpaperwork@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii)).

The GLBA Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLBA, 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping.

Estimated annual hours burden: Estimating the paperwork burden of the GLBA Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a federal financial regulatory agency. Under section 505(a)((7) of the GLBA, the Commission has jurisdiction over the entities that are not specifically subject to another agency's jurisdiction (*see* sections 505(a)(1)–(6) of the GLBA). Because of the types of disclosures at issue and the requirements of the regulations, the frequency of responses, and the volume of respondents, cannot be determined with certainty.

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the GLBA Rule. In addition, some entities may use highly automated means of providing the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Start-up hours and labor costs for new entities: While staff believes its prior estimate of the number of entities subject to the Rule (100,000) remains reasonable, it also estimates that, on average, no more than approximately 5,000 new entities each year will address the GLBA Rule for the first time. The prior amount recognized the newness of the Rule and the many existing business entities that would be subject to it for the first time. The estimates regarding already established entities are reflected in the second table below, and retain the larger population estimate as the base for further calculations.[1]

Event	Number of hours/costs per event and labor category * (per respondent)	Approx. number of respondents	Approx. annual hours (millions)	Approx. total costs (millions)
Reviewing internal policies and developing GLBA-implementing instructions **.	Managerial/professional time: 20 hrs/$1,000	5,000	0.1	$5
Creating actual disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	Clerical: 5 hrs/$50; skilled labor: 10 hrs/$200	5,000	.075	1.25
Disseminating initial disclosure (including opt out notices).	Clerical: 15 hrs/$150; skilled labor: 10 hrs/$200.	5,000	.125	1.75
Total	.....	.....	.300	8.00

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were $50 for managerial/professional time (e.g., compliance evaluation and/or planning), $20 for skilled technical time (e.g., designing and producing notices, reviewing and updating information systems), and $10 for clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). Labor cost totals reflect solely that of the commercial entities affected. Staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of document and/or electronic disclosures).

Burden hours and costs for established entities: Burden for entities already familiar with the Rule would predictably be less up entities since start-up costs, such as crafting a privacy policy,

[1] While the existing population affected would increase with the inflow of new entrants, staff will retain its estimate of overall population affected, allowing, in part, for businesses that will close in any given year, and the difficulty of establishing a more precise estimate.

are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Number of hours/costs per event and labor category * (per respondent)	Approx. Number of respondents	Approx. annual hours (millions)	Approx. total costs (millions)
Reviewing GLBA-implementing policies and practices.	Managerial/professional time: 4 hrs/$200	70,000	.28	$14.0
Disseminating annual disclosure	Clerical: 15 hrs/$150; skilled labor: 5 hrs/$100.	70,000	1.40	17.5
Changes to privacy policies and related disclosures.	Clerical: 15 hrs/$150; skilled: 5 hrs/$100	1,000	.02	.25
Total	.....	.....	1.70	31.75

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were $50 for managerial/professional time (e.g., compliance evaluation and/or planning), $20 for skilled technical time (e.g., designing and producing notices, reviewing and updating information systems), and $10 for clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). Consumers have a continuing right to opt-out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt-out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents is based on the following assumptions: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

As calculated above, the average PRA burden for all affected entities in a given year would be 1,000,000 hours and $19,875,000.

Estimated Capital/Other Non-Labor Costs Burden: Staff estimates that the capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.,* computers with word processing programs, typewriters, copying machines, mailing capabilities.) Most likely, only entities that already have on-line capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–5128 Filed 3–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—These regulations and informed consent procedures are associated with Federally funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—*Annual Responses:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—Burden Estimate for Record-keeping Requirement—*Number of Record-keepers:* 4,000; *Average Burden per Record-keeper:* 2.5 hours; *Total Burden for Record-keeping:* 10,000 hours. *Total Burden:* 50,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov,* or mail to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: February 22, 2002.

Kerry Weems,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–4967 Filed 3–1–02; 8:45 am]

BILLING CODE 4190–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. A Study of Stroke Post-Acute Care and Outcomes—New—The Office of the Assistant Secretary for Planning and Evaluation proposes a study to compare risk-adjusted quality indicators related to care provided across the three post-acute care (PAC) settings. The three settings are skilled nursing facilities, home health agencies and inpatient rehabilitation facilities. Stroke was chosen as a tracer condition for this study because it accounts for approximately 10 percent of all Medicare PAC admissions and because stroke patients are treated in all three

PAC settings. *Respondents:* Individuals, Business or other for-profit; Facility Burden Information—*Number of Respondents:* 74; *Average Burden per Facility:* 3.78 hours; *Facility Burden:* 280 hours—Patient Burden Information—*Number of Respondents for Informed Consent:* 1347; *Average Burden per Response:* 10 minutes; *Burden for Informed Consent:* 225 hours—*Number of Respondents for Admission Interview:* 1051; *Average Burden per Response:* 32.8 minutes; *Burden for Admission Interview:* 575 hours—*Number of Respondents for 90-day Follow-up Interview:* 919; *Average Burden per Response:* 28.4 minutes; *Burden for 90-day Follow-up Interview:* 435 hours—*Total Burden:* 1,515 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: February 21, 2002.

Kerry Weems,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–4966 Filed 3–1–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicaid Program Budget Request; *Form No.:* CMS–37 (OMB# 0938–101); *Use:* The Medicaid Program Budget Request is prepared by the State agencies and is used by CMS for (1) developing National Medicaid Budget estimates; (2) qualification of budget assumptions; (3) the issuance of quarterly Medicaid grant awards, and (4) collection of projected State receipts of donations and taxes; *Affected Public*: State, local, or tribal gov't; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 8064.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–37, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4968 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10060]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request; Title of Information Collection; Form No.: CMS–10060 (OMB# 0938–NEW); *Use;* This project completion report derives from the Quality Improvement System for Managed Care (QISMC) Standards and Guidelines as required by the Balanced Budget Act of 1997 (as amended by the Balanced Budget Refinement Act of 1999) and the related regations, 42 CFR 422.152. These regulations established QISMC as a requirement for Medicare + Choice (M+C) Organizations by requiring improved health outcomes for enrolled beneficiaries. The provisions of QISMC specify that M+C organizations will implement and evaluate quality improvement projects. The form submitted herein will permit M+C organizations to report their completed projects to CMS in a standardized fashion for evaluation by CMS of the M+C organization's compliance with regulatory provisions. This form will improve consistency and reliability in the CMS evaluation process as well as provide a standardized structure for public use and review; *Frequency:* Annually; *Affected Public:* Business or

other for-profit, not-for-profit institutions; *Number of Respondents:* 155; *Total Annual Responses:* 310; *Total Annual Hours:* 620–1240 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 21, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4969 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1771]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR Section 424.103; *Form No.:* CMS–1771 (OMB# 0938–0023); *Use:* Payment, by Medicare, may be made for certain Part A inpatient hospital services and Part B outpatient services provided in a nonparticipating U.S. or foreign hospital, when services are necessary to prevent the death or serious impairment to the health of an individual. This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim:

Frequency: On occasion;

Affected Public: Business or other for profit;

Number of Respondents: 2,000;

Total Annual Responses: 2,000;

Total Annual Hours: 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–1771, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4970 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–843 and CMS–841, 842, 844–853]

Agency Information Collection Activities: Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

T*ype of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Power Wheel Chair Certificate of Medical Necessity; *Form No.:* CMS–843; *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. This form contains medical information necessary to make an appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal Government; *Number of Respondents:* 2,700; *Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity (CMS–841, 842, 844–853); *Form No.:* CMS–841,842, 844–853 (OMB# 0938–0679); *Use:* This

information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information necessary to make an appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.13 to 1.7 million.

As the result of the town hall meetings held last year at OMB, CMS received a large volume of comments and agreed to most of the proposed changes. Proposed changes included:

Proposed Changes to CMS Form 843 Durable Medical Equipment Certificates of Medical Necessity (CMNs)

1. For Form 843 the Disclosure Statement Will Change

• The address for suggestions will read, ''CMS, 7500 Security Boulevard, N2–14–26, Baltimore, Maryland 21244–1850 and the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.''

• The timeframe to complete the CMN will remain at 15 minutes.

2. For Form 843 the Health Care Financing Administration (HCFA) Would Change to Centers for Medicaid & Medicare Services (CMS)

• Top left of all forms will say ''U.S. Department of Health & Human Services, Centers for Medicaid & Medicare Services.''

• Bottom left will say ''FORM CMS__*form number goes here.*__''

3. Verbiage to the Instructions on the Back Page for HCFA Form 843

• Has been changed from ''ordering'' physician to ''treating'' physician.

4. DMERC Form Number Will Need Changed

• DMERC form number for Motorized Wheelchairs will change to 02.04A

5. The Estimated Length of Need Changed for Form 843

• In Section B the estimated length of need was changed to ''the estimated length of need (# of months starting from the Initial Date in Section A).''

Rationale: The old verbiage had physicians completing this section at the time they were completing the form that allowed for errors to occur by the physician inadvertently changing the estimate.

• The back page of these forms need to be revised by adding ''For Revised CMN or Recertification CMNs, the estimated length of need must be expressed as the number of months starting from the Initial Date in Section A.''

6. The Date of the Form Changed for Forms 841–854

• The date in the lower left corner, which indicates a revision without substantive changes will need to be revised to indicate when the changes may occur.

7. Form 843 Motorized Wheelchairs

• Change verbiage of question 7 to read, ''Is the patient able to operate any type of manual wheelchair.''

Rationale: The current verbiage, which requires the physician to respond in the affirmative to a negative question results in numerous errors in completion of the form.

Proposed Changes to CMS Forms 841–854 Durable Medical Equipment Certificates of Medical Necessity (CMNs)

1. For Forms 841–854 the Disclosure Statement Will Change

• The address for suggestions will read, ''CMS, 7500 Security Boulevard, N2–14–26, Baltimore, Maryland 21244–1850 and the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.''

• The timeframe to complete the CMN will remain at 15 minutes.

2. For Forms 841–854 the Health Care Financing Administration (HCFA) Would Change to Centers for Medicaid & Medicare Services (CMS)

• Top left of all forms will say ''U.S. Department of Health & Human Services, Centers for Medicaid & Medicare Services.''

• Bottom left will say ''FORM CMS__*form number goes here.*__''

3. Verbiage to the Instructions on the Back Page for HCFA Forms 841–854

• Has been changed from ''ordering'' physician to ''treating'' physician.

4. 5 DMERC Form Numbers Will Need Changed

• DMERC form number on the top right of the Hospital Bed CMN will change to 01.03A

• DMERC form number for Motorized Wheelchairs will change to 02.04A

• DMERC form number for Infusion Pumps will change to 09.03

• DMERC form number for Parenteral Nutrition will change to 10.03A

• DMERC form number for Enteral Nutrition will change to 10.03B

5. The Estimated Length of Need Changed for Forms 841–854

• In Section B the estimated length of need was changed to ''the estimated length of need (# of months starting from the Initial Date in Section A).''

Rationale: The old verbiage had physicians completing this section at the time they were completing the form that allowed for errors to occur by the physician inadvertently changing the estimate.

• The back page of these forms need to be revised by adding ''For Revised CMN or Recertification CMNs, the estimated length of need must be expressed as the number of months starting from the Initial Date in Section A.''

6. The Date of the Form Changed for Forms 841–854

• The date in the lower left corner, which indicates a revision without substantive changes will need to be revised to indicate when the changes may occur.

7. Form 841 Hospital Beds

• Questions 1 and 3 of section B will be combined.

Rationale: To simplify the questions on the form.

• Section B answer section was changed to reflect that question 3 is reserved for further use.

8. Form 842 Support Surfaces

• The title of the CMN would change to Air-Fluidized Beds and omit question 12.

Rationale: To reflect the elimination of a CMN requirement for Group I and II support surfaces.

• The header in Section B needs revised to say ''Answer questions 13–22 for air-fluidized beds''.

9. Form 843 Motorized Wheelchairs

• Change verbiage of question 7 to read, ''Is the patient able to operate any type of manual wheelchair.''

Rationale: The current verbiage, which requires the physician to respond in the affirmative to a negative question results in numerous errors in completion of the form.

10. Form 844 Manual Wheelchairs

• To be consistent with other CMNs, a box was added under the Section B header which says ''Questions 6 and 7 reserved for other or future use.''

11. Form 847 Osteogenesis Stimulators

• A box under the Section B header would be added which says ''Questions 1–5 reserved for other or future use''.

• The header under Section B will also be revised to say ''Answer question 6–8 for *nonspinal electrical* osteogenesis stimulator. Answer question 9–11 for *spinal electrical* osteogenesis stimulator. Answer question 6 and 12 for *ultrasonic* osteogenesis stimulator.''

• Change verbiage of question 6a to read, '' If the patient has had a fracture, do two sets of multiple-view radiographs taken at least 90 days apart (prior to starting treatment with the device) show that there has been no clinically significant fracture healing?'' Rationale: This language is consistent with the new national coverage decision.

• Add question 12 which would state ''Has the patient failed at least one open surgical intervention for the treatment of the fracture?'' The answer box contains the choices ''Y N D''. Rationale: To accommodate ultrasonic stimulators.

12. Form 851 External Infusion Pumps

• Change the answers to question 4 to read 1 2 3 4

• Change the verbiage to question 4 to read, ''1—Intravenous; 2—Intra-arterial; 3—Epidural; 4—Subcutaneous''

Rationale: At least one drug for which an infusion pump is covered is administered intra-arterially.

• Eliminate question 5 in section B.

Rationale: It will eliminate confusion and redundancy that is already captured in question 6.

• Change the verbiage of question 7 to remove the extra spaces between the words

''oral/transdermal'' and ''narcotic''

Rationale: Correct typographical error.

• In Section B, question 7, the word ''permanent'' was omitted.

Rationale: To clarify the question.

• A box would be added under the Section B Header which says ''Question 5 reserved for other or future use''.

13. Form 852 Parenteral Nutrition

• Change the answers to question 5 to read 1 3 4 7.

• Change the verbiage to question 5 to read, ''Circle the number for the route of administration. 2, 5, 6—Reserved for other or future use.

1—Central Line; 3—Hemodialysis Access Line; 4—Peritoneal Catheter;

7—Peripherally Inserted Catheter (PIC).''

Rationale: Some parenteral dialysis solutions are administered via a beneficiary's peritoneal catheter. Use of this route of administration must be indicated on the CMN so that a coverage determination can be made accordingly.

14. Form 853 Enteral Nutrition

• Question 11 in section B would be changed to read ''Prescribed calories per day for each product?''

Rationale: To clarify that the number of calories ordered per day are not the number of calories the patient may or may not consume.

• Section B, question 7 the term ''permanent'' has been omitted.

Rationale: The DMERC can screen for the criterion by looking at the value entered by the physician in the Estimated Length of Need field.

• Section B, question 15 will be made to a multiple-choice question.

Rationale: To be consistent with the policy to supply additional information for the use of the pump.

• Section B, answer to question 13 would be changed to say ''Does not apply'' in replace of ''Oral''.

Rationale: To address situations when someone submits a CMN for orally administered enteral nutrients.

However, due to the Health Insurance Portability & Accountability Act Administrative Simplification implications, extensive system changes, cost implications and time limitations needed for educational efforts, CMS will continue to use the current CMNs. In addition, to fully evaluate the impact of CMNs before making a reasoned and rational decision regarding the future of CMNs and the disposition of the proposed technical changes, CMS has contracted with Tri-Centurion, LLC to perform a detailed study of CMNs. Tri-Centurion is objectively evaluating the usage and results of CMNs and will present CMS with recommendations in October of 2002 that will assist in the ultimate disposition of each CMN.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMN's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4971 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–193]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* ''Important Message from Medicare'' Title XVII Section 1866(a)(1)(M), 42 CFR 466.78, 489.20, 489.34, 489.27, 411.404, 412.42, 417.440 and Section 422.620; *Form No.:* CMS–R–193 (OMB# 0938–0692); *Use:* Hospital participating in the Medicare program have agreed to distribute the ''Important Message from Medicare'' to beneficiaries during the course of their hospital stay and inform them of their impending charges. Receiving this information will provide all Medicare beneficiaries with some ability to participate and/or initiate discussions concerning actions that may affect their Medicare coverage, payment, and appeal rights in response to hospital notification their care will no longer continue; *Frequency:* Other: Distribution; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 5,985; *Total Annual Responses:* 11,500,000; *Total Annual Hours:* 632,500.

Since the last version of form CMS–R–193, ''Important Message from Medicare'' (IM), was published, we have had several conversations with representatives of the hospital and managed care industry about how to make the IM a less burdensome, but equally effective, process. Most recently (this month), we consulted with representatives of the American Hospital Association, and the New Jersey Hospital Association, as well as with the Kaiser M+C organization staff to alert them to our plan to introduce a much less burdensome IM form and methodology. There has been general, unofficial agreement that the new approach would be viewed as a welcome improvement by the industry (although, we realize that some issues may remain). Because, we previously submitted this collection for OMB clearance, reduced burden on respondents and consulted with the industry, we believe that further review at the agency level is not justified. Therefore, we are proceeding directly with clearance through OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 21, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4972 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Oklahoma State Plan Amendment 99–09

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 10, 2002, at 10 a.m., in Conference Room 1113; 1301 Young Street; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma State Plan Amendment (SPA) 99–09.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Oklahoma's State Plan Amendment (SPA) 99–09. Oklahoma submitted SPA 99–09 on April 26, 1999.

The SPA would provide for coverage and payment of certain services as targeted case management services for children who receive medical services pursuant to an Individualized Education Program, Individualized Family Service Plan, or an Individualized Health Service Plan. Under the SPA, providers of school-based medical services would be the only qualified providers of these services, which would be diagnostic in nature, and payment would be limited to the provider of an underlying medical service.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issues are: (1) Whether the proposed covered services are in compliance with the statutory definition of case management services at section 1915(g) of the Act; (2) whether the payment rates are consistent with ''efficiency, economy, and quality of care'' in light of their high levels and apparent duplication of provider services already included in the basic provider payment; (3) whether the proposed restriction on payment for case management services to providers furnishing other covered medical services violates the freedom of choice requirements of section 1923(a)(23)(A) of the Act; and (4) whether the proposed payment for services required under an individualized health services plan (IHSP), for which educational programs are legally liable to pay, is consistent with requirements at section 1902(a)(25) of the Act to pursue payment from all liable third parties.

As explained in the initial disapproval determination, CMS concluded that the State had not demonstrated that the proposed covered services were within the scope of section 1915(g) of the Act. The proposed services would consist of activities such as needs assessment, service planning, service coordination and monitoring, service plan review, and crisis assistance planning and were described by the State as generally diagnostic in nature. In contrast, case management services are described at section 1915(g) as directed at ''gaining access to needed medical, social, educational, and other services.'' In addition, CMS found that the services described in the amendment were inherent within the services performed by medical professionals in order to properly diagnose and treat their patients, and are integral to the services routinely paid through the basic fee-for-service rate paid to the providers. In light of the fact that the rates already being paid under the Oklahoma approved plan for school-based medical services were already higher than community rates and those paid generally, CMS therefore concluded that the proposed payments were not consistent with efficiency, economy and quality of care, as required by section 1902(a)(30)(A) because they effectively were duplicate payments for services covered by the basic payment rate. Furthermore, even if one were to assume that the proposed services were distinct from services included in the basic payment rate, CMS found that the proposed limitation of such payments to the provider furnishing the underlying services was inconsistent with beneficiary freedom-of-choice of provider, as required by section 1902(a)(23)(A) of the Act. And, finally, CMS concluded that the proposed specific authority to pay for services required under an IHSP was inconsistent with Medicaid requirements to pursue liable third party payers, under section 1902(a)(25) of the Act and implementing regulations at 42 CFR 433.136. CMS noted that educational programs are legally liable to fund IHSP activities, and thus should be required to pay primary to Medicaid.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Oklahoma SPA 99–09.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Michael Fogarty, Chief Executive Officer, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Boulevard, Suite 124, Oklahoma City, Oklahoma 73105–3413.

Dear Mr. Fogarty:

I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendment (SPA) 99–09. Oklahoma submitted SPA 99–09 on April 26, 1999.

The issues are: (1) Whether the proposed covered services are in compliance with the statutory definition of case management services at section 1915(g) of the Social Security Act (the Act); (2) whether the payment rates are

consistent with ''efficiency, economy and quality of care'' in light of their high levels and apparent duplication of provider services already included in the basic provider payment; (3) whether the proposed restriction on payment for case management services to providers furnishing other covered medical services violates the freedom-of-choice requirements of section 1923(a)(23)(A) of the Act; and (4) whether the proposed payment for services required under an individualized health services plan (IHSP), for which educational programs are legally liable to pay, is consistent with requirements at section 1902(a)(25) of the Act to pursue payment from all liable third parties.

As explained in the initial disapproval determination, CMS concluded that the State had not demonstrated that the proposed covered services were within the scope of section 1915(g) of the Act. The proposed services would consist of activities such as needs assessment, service planning, service coordination and monitoring, service plan review, and crisis assistance planning and were described by the State as generally diagnostic in nature. In contrast, case management services are described at section 1915(g) as directed at ''gaining access to needed medical, social educational and other services.''

In addition, CMS found that the services described in the amendment were inherent within the services performed by medical professionals in order to properly diagnose and treat their patients, and are integral to the services routinely paid through the basic fee-for-service rate paid to the providers. In light of the fact that the rates already being paid under the Oklahoma approved plan for school-based medical services were already higher than community rates and those paid generally, CMS therefore concluded that the proposed payments were not consistent with efficiency, economy and quality of care, as required by section 1902(a)(30)(A) because they effectively were duplicate payments for services covered by the basic payment rate. Furthermore, even if one were to assume that the proposed services were distinct from services included in the basic payment rate, CMS found that the proposed limitation of such payments to the provider furnishing the underlying services was inconsistent with beneficiary freedom-of-choice of provider, as required by section 1902(a)(23)(A) of the Act. And, finally, CMS concluded that the proposed specific authority to pay for services required under an IHSP was inconsistent with Medicaid requirements to pursue liable third party payers, under section 1902(a)(25) of the Act and implementing regulations at 42 CFR 433.136. CMS noted that educational programs are legally liable to fund IHSP activities, and thus should be required to pay primary to Medicaid.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Oklahoma SPA 99–09.

I am scheduling a hearing on your request for reconsideration to be held April 10, 2002, at 10 a.m., in Conference Room 1113; 1301 Young Street; Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR Section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: February 21, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–4973 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS–UP, EHS–UP&HSGS 2002–03]

Fiscal Year 2002 Discretionary Announcement for Head Start-University Partnerships Research Projects, Early Head Start-University Partnerships Research Projects, and Head Start Graduate Student Research Grants; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications for research by university faculty or other nonprofit institutions (Priority Areas 1.01 and 1.02) and doctoral level graduate students (Priority Area 1.03) in partnership with Head Start programs.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) and Office of Planning, Research and Evaluation (OPRE) announce the availability of funds for three initiatives: Priority Area 1.01: Head Start-University Partnerships for research activities to develop and test models that use child outcomes to support continuous program improvement in local Head Start programs; Priority Area 1.02: Early Head Start-University Partnerships for research activities to support the development of infant-toddler mental health; Priority Area 1.03: Graduate Student Research Grants to support field-initiated research activities.

DATES: The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone), May 3, 2002. Applications received after 5 p.m. on the deadline date will be classified as late.

ADDRESSES: Mail applications to: Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102.

Hand delivered, courier or overnight delivery applications are accepted during the normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date.

All packages should be clearly labeled as follows:

Application for Head Start-University Partnerships, or

Application for Early Head Start-University Partnerships, or

Application for Head Start Graduate Student Grants, as appropriate.

FOR FURTHER INFORMATION CONTACT: The Head Start Research Support Technical Assistance Team (1–877) 663–0250, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: *hsr@xtria.com.*

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, *you must send a post card, call or e-mail with the following information: the name, address, telephone and fax number, e-mail address of the principal investigator, and the name of the university or non-profit institution at least four weeks prior to the submission deadline date to:* Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102. (1–877) 663–0250.

E-mail *hsr@xtria.com.*

Part I. Purpose and Background

A. Purpose

The purpose of this announcement is to announce the availability of funds for three initiatives: Priority Area 1.01: Head Start-University Partnerships for research activities to develop and test models that use child outcomes to support continuous program improvement in local Head Start programs; Priority Area 1.02: Early Head Start-University Partnerships for research activities to support the development of infant-toddler mental health; Priority Area 1.03: Graduate Student Research Grants to support field-initiated research activities.

B. Background

Priority 1.01: Head Start-University Partnerships

In 2001, Head Start marked the sixth year of implementing its system of Program Performance Measures. From initial planning in 1995 to the ongoing data collection on a second national cohort of Head Start children that began in fall 2000, Head Start has made dramatic progress in developing an outcome-oriented accountability system. This approach combines nationally representative data on programs, families, and children with program-level reporting and monitoring and is based on a consensus-driven set of criteria for program accountability.

Specifically, the Program Performance Measures were developed in accordance with the recommendations of the Advisory Committee on Head Start Quality and Expansion, the mandate of section 641A(b) of the Head Start Act (42 USC 9831 *et seq.*) as reauthorized in 1994, and the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). In fall 1997, Head Start launched the Family and Child Experiences Survey (FACES), a study with a nationally representative sample of 3200 children and families in 40 Head Start programs. FACES describes the characteristics, experiences and outcomes for children and families served by Head Start, and also observes the relationships among family, staff, and program characteristics and child outcomes. Continuing with a second nationally representative sample in fall 2000, FACES now provides Head Start with the ability to examine all facets of key outcomes and children's school readiness on an ongoing basis. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/faces/faces_intro.html.*

The reauthorization of Head Start in 1998 further specified child outcomes that local programs should use in their self-assessments and that should be reviewed as part of the monitoring process. In two information memoranda (ACYF–IM–00–03, January 31, 2000 and ACYF–IM–00–18, August 10, 2000) Head Start outlined the legislative changes and provided guidance on the use of child outcomes in program self-assessments. As part of the second memorandum, the Head Start Bureau provided a Child Outcomes Framework of eight Domains based on the Head Start Program Performance Standards: Language Development, Literacy, Mathematics, Science, Creative Arts, Social and Emotional Development, Approaches Toward Learning, and Physical Health and Development. Programs are expected to ensure that their system for ongoing assessment of children includes collection of data in each of these Domains. In addition, because they are legislatively mandated, programs must gather and analyze data on certain specific Domain Elements or Indicators of progress in language, literacy, and numeracy skills. For further information see: *http://www.hskids-tmsc.org/publications/im00/im00_18.htm.*

Under these new accountability requirements, local programs must develop a system to analyze data on child outcomes that centers on patterns of progress for groups of children over the course of the Head Start year. At a minimum, data analysis should compare progress when children enter the program, at a mid-point, and when they complete the program year. In most programs, analysis of child outcomes should be based on data from all children enrolled, but approaches that include representative sampling of children can also be considered. Child assessment should provide objective, accurate, consistent and credible information, including ensuring that tools are appropriate in terms of age, language, and cultural background. Grantees should fully include children with identified disabilities in the child assessment system, with appropriate accommodation of the assessment tool(s). Training and oversight for personnel who administer assessments, record progress, and analyze and report on data are key to ensure quality and usefulness. Strategies for incorporating data on patterns of child outcomes into overall program self-assessment and reporting are also addressed in the guidance.

These requirements call for programs to develop, refine and maintain systems which meet requirements both for individualizing services to meet child and family needs, and for providing information for improving services. The overall goal of the child assessment initiative is to create improved learning environments for children served by Head Start. Through the National Leadership Conference held in December 2000, and a number of subsequent leadership and training and technical assistance conferences, the Head Start Bureau has further specified its expectations for grantees.

This new initiative creates an opportunity for building model partnerships between program staff and researchers based in universities and other non-profit research institutions. Grantees are experts on the available strengths and needs of their families and communities, as well as the particular histories of their programs. Grantees can usually benefit from technical expertise in all aspects of the initiative, from selection of assessment tools appropriate for their curriculum, methods for administering assessments, methods for measuring classroom quality, approaches for data entry and management, techniques for data analysis, and of course, training of staff who will be responsible for each phase. Such partnerships necessitate that researchers become familiar with the goals, approaches, and existing systems of grantee self-assessment and child assessment, and build on these to develop logic models or theories of change. They also require that the technical experts encourage professional development of program personnel to become increasingly adept at managing

the system on their own. The successful partnership will be able to provide research-based evidence that the intervention is using information on child outcomes to improve the early learning environments for Head Start children.

The lessons learned from model partnerships can then be disseminated through training and technical assistance, both through the Head Start network and by other means. Examples of products expected from these partnerships include, but are not limited to: Methodological approaches for sampling, assessment and analysis at the local program level; plans for reporting data to teachers, parents, and management staff; data management systems; integrated curricular and assessment approaches; professional development approaches including coursework and training materials; and plans for disseminating information to the broader Head Start and child development communities.

Cooperative Agreements

For Priority Area 1.01 ACYF is utilizing a cooperative agreement mechanism, a funding mechanism that allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative agreement. At a minimum, however, the following roles and responsibilities will characterize the Research Partnerships:

1. Responsibilities of the Grantee

The Grantee

Conducts a local intervention and research project designed to develop, evaluate, refine and assist in dissemination of models to support continuous program improvement through use of child outcome measures.

Cooperates with one or more local Head Start programs in the design, implementation, and evaluation of the intervention.

Participates as a member of the Head Start-University Partnerships Research Consortium with other researchers, program partners, and Federal staff.

2. Responsibilities of the Federal Staff

Federal Staff

Provide guidance in the development of the final study design, including suggestions for possible cross-site measures.

Participate as members of the Research Consortium or any policy, steering, or other working groups established at the Research Consortium level to facilitate accomplishment of the project goals.

Facilitate communication and cooperation among the Research Consortium members.

Provide logistical support to facilitate meetings of the Research Consortium.

Priority Area 1.02: Early Head Start-University Partnerships

In recognition of the importance of the first three years of life, the 1994 Head Start Reauthorization legislation expanded Head Start to serve pregnant women and families with infants and toddlers. From initial funding in 1995 to the 664 programs in operation today, Early Head Start continues the legacy of Head Start in providing comprehensive services to low-income children, families and communities. While programs are flexibly designed to provide services in response to the needs of families in the community, all programs are required to provide home visits, child development, health and nutrition services for young children and pregnant women and to develop family and community partnerships.

Early Head Start also continues the long-standing commitment of Head Start programs to supporting the social and emotional well-being of children. However, programs serving infants and toddlers often struggle to understand the emotional and mental health needs of very young children and their families and how to address these needs. In fact, the relatively young (but growing) field of infant mental health has only recently begun to shed light on the importance of assessing and addressing these needs as well as providing guidance through empirically validated practice. In response to questions from program staff and members of the technical assistance network and at the urging of the Early Head Start Technical Work Group, in October 2000 the Administration on Children, Youth and Families held a national meeting, the Infant Mental Health Forum. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/imh/imh_intro.html.* The primary goals of the Forum were to address the role of Early Head Start and the Migrant Head Start program along with their community child care partners in promoting infant mental health in all children, preventing problems in at-risk populations, and accessing treatment for those with identified needs. The Forum allowed for the sharing of information from leaders in the field of infant mental health and the sharing of promising practices from four Early Head Start programs.

One of the challenges of the Infant Mental Health Forum was to come to a common definition of the term ''infant mental health.'' The term itself causes many to feel unease as it links the suffering, maladjustment and stigma associated with mental health to the innocence and newness of infancy. However, others advocate using the term because of the inclusion of the mental health professions as well as an acknowledgement of the suffering that infants can experience. Charles Zeanah, a keynote speaker at the Forum used the following definition: ''Infant mental health may be defined as the state of emotional and social competence in young children who are developing appropriately within the interrelated contexts of biology, relationship, and culture.'' The definition stresses the developmental appropriateness of behaviors and the relationship context of understanding behaviors and intervention.

The participants in the Forum identified a rationale for addressing the mental health of young children and their parents, principles to guide the work, and suggested action steps in order for programs to be able to more fully address the needs of young children and their families. The forum participants stressed the need to addresses issues of cultural competence, adequacy of available screening and assessment tools, as well as populations with special needs. Several areas of need were highlighted, including program guidance, public awareness, public policy, professional development, reflective supervision, cross-disciplinary collaboration, financing, and research and evaluation. In response to those suggestions, the Head Start Bureau has commissioned the Early Head Start National Resource Center to engage in consensus building, training and dissemination. This announcement builds on the suggestion to conduct research at demonstration sites to identify interventions that are effective in promoting infant mental health and to better understand what works for whom, how and why.

The Early Head Start Research and Evaluation Project has also provided information on the needs of the children and families served as well as areas in which the program is effective. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/ehs/ehs—intro.html.* When children were two years old,

Early Head Start children were functioning significantly better across a range of domains including cognitive, language and social-emotional than children in a randomly assigned control group. There were also significant impacts on parents. For instance, Early Head Start mothers report lower levels of parenting stress and family conflict, read to their children more, provide more enriched home environments, and seem to use less harsh discipline techniques. From observations of parent-child interactions, there is some indication that Early Head Start mothers provide more optimal levels of support and sensitivity, although no differences were observed in child behaviors. However, there was no indication that Early Head Start made a difference in rates of maternal or paternal depression, the one mental illness assessed. Furthermore, although approximately half of the mothers entering Early Head Start scored above the ''at-risk for depression'' cutoff on a measure of depressive symptoms, Early Head Start families were not more likely to be accessing mental health services than the control group (both approximately 17%). So, while programs are not affecting depression or improving access to mental health services, they may bolster the parent-child relationship and help protect children from the problems associated with parental depression.

Building on the needs identified both by practitioners in Early Head Start and the Early Head Start Research and Evaluation Project, and at the suggestion of the Infant Mental Health Forum participants, this announcement will support the identification of empirically-based interventions that are enhancements to Early Head Start programs, designed to promote the mental health of young children and their families. Each partnership team of one or more Early Head Start grantees and a research organization will identify or further develop a particular, self-selected approach toward enhancing program practices, based on the needs of the population served, which they will then implement along with an evaluation. However, the evaluation shall include aspects of the intervention delivery (services delivered) and program context (structures and supports necessary to implement the intervention) as well as outcomes for children and families and associations between services and outcomes. The evaluation design should be responsive to the nature of the intervention, the state of development of the intervention, the program context, and other factors. Possible designs include (but are not limited to) change over time (pre to post testing), quasi-experimental methods (e.g., non-randomized comparison group), or random assignment. As part of the evaluation, assessment tools that are comfortable (with training) for staff to use and that provide information that is useful for planning and referral must be identified. Staff training may be needed on use of the assessment tools as well as a broader training in the understanding of mental health disorders to aid in recognition of possible problems. During the assessment and implementation process there will certainly be families who need additional and specialized treatments. Partners should also identify protocols for helping those families who need additional services access those services. The ultimate goal for this work is to disseminate identified interventions and measures through training and technical assistance.

Cooperative Agreements

For Priority Area 1.02 ACYF is utilizing a cooperative agreement mechanism, a funding mechanism that allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative agreement. At a minimum, however, the following roles and responsibilities will characterize the Research Partnerships:

1. Responsibilities of the Grantee

The Grantee

Conducts a local intervention and research project designed to implement, evaluate, refine and assist in dissemination of interventions to support the mental health of infants/toddlers and their families.

Uses common assessment battery to be determined by Early Head Start University Partnerships Research Consortium (consisting of Research Grantees, program partners, and Federal staff). Grantees are also encouraged to use site-specific measures as well.

Cooperates with one or more local Early Head Start programs in the design, implementation, and evaluation of the intervention.

Participates as a member of the Early Head Start University Partnerships Research Consortium with other researchers, program partners, and Federal staff.

2. Responsibilities of the Federal Staff

Federal Staff

Provide guidance in the development of the final study design, including suggestions for possible cross-site measures.

Participate as members of the Consortium or any policy, steering, or other working groups established by the consortium to facilitate accomplishment of the project goals.

Facilitate communication and cooperation among the Consortium members.

Provide logistical support to facilitate meetings of the Consortium.

Priority Area 1.03: Head Start Graduate Student Grants

Since 1991, the Head Start Bureau has explicitly supported the relationship between established Head Start researchers and their graduate students by awarding research grants, on behalf of specific graduate students, to conduct research in Head Start communities. As many previously funded Head Start graduate students have continued to make significant contributions to the early childhood research field as they have pursued their careers, this funding mechanism is an important research capacity-building effort. Mentor-student relationships will help foster the intellectual and professional development of the next generation of researchers who will advance the scientific knowledge base needed to improve services for Head Start children and families.

To ensure that future research is responsive to the changing needs of low-income families, graduate students need strong and positive role models. Therefore, Head Start's support of the partnership between students and their mentors is essential. The unique partnership that is forged between mentor and student, within the Head Start research context, serves as a model for the establishment of other partnerships within the community (*e.g.,* researcher-Head Start staff, researcher-family). This foundation helps foster the skills necessary to build a graduate student's trajectory of successful partnership-building and contributions to the scientific community. Within this nurturing and supportive relationship, young researchers are empowered to become autonomous researchers, learning both theory as well as the process of interacting with the various members and relevant organizations within their communities. In an ever-changing, dynamic society, graduate student researchers need to be flexible in

adapting to the changing needs of the diverse populations and communities. The mentoring relationship serves to support graduate students as they actively engage in this learning process, preparing them to be exemplary and responsible research scientists in the community.

Thus, the goals of the Head Start Graduate Student Research Grant program can be summarized as follows:

1. Provide direct support for graduate students as a way of encouraging the conduct of research with Head Start populations, thus contributing to the knowledge base about the best approaches for delivering services to diverse, low-income families and their children;

2. Promote mentor-student relationships which support students' graduate training and professional development as young researchers engaged in policy-relevant, applied research;

3. Emphasize the importance of developing true working partnerships with Head Start programs and other relevant entities within the community, thereby fostering skills necessary to build a student's trajectory of successful partnership-building and contributions to the scientific community; and

4. Support the active communication, networking and collaboration among graduate students, their mentors and other prominent researchers in the field, both during their graduate training, as well as into the early stages of their research careers.

While the specific topics addressed under these Graduate Student Research Grants are intended to be field-initiated, applicants who address issues of both local and national significance will be most likely to succeed. Some illustrative examples of such topics include, but are not limited to the areas of school readiness, children's mental health, and strengthening fatherhood and healthy marriages in Head Start.

Unlike the first two priority areas of this announcement, awards for Priority Area 1.03 will be funded as research grants rather than as cooperative agreements.

Part II. Priority Areas

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

CFDA: 93.600

Priority Area 1.01: Head Start-University Partnerships Research Projects

Eligible Applicants: Universities, four-year colleges, and non-profit institutions on behalf of researchers who hold a doctoral degree or equivalent in their respective fields. Faith-based organizations are also eligible to apply.

Additional Requirements

- The principal investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.
- The proposed intervention plan must be responsive to the goal of supporting continuous program improvement through use of child outcome data.
- The proposed evaluation plan should specify which measures of implementation quality and standardized assessments of child development outcomes are to be used.
- The applicant must apply the University's or nonprofit institution's off-campus research rates for indirect costs.
- The applicant must enter into a partnership with a Head Start program for the purposes of conducting the research.
- The application must contain a letter from the Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.
- The principal investigator must agree to attend two meetings each year in Washington, DC, including Head Start's National Research Conference in the summer of 2004.
- The budget should reflect travel funds for such purposes.
- Contact information, including an e-mail address, for the principal investigator must be included in the application.

Project Duration: The announcement is soliciting applications for project periods of up to four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation of cooperative agreements funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through fourth 12-month budget periods.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

Priority Area 1.02 Early Head Start-University Partnership Research Projects

Eligible Applicants: Universities, four-year colleges, and non-profit institutions on behalf of researchers who hold a doctoral degree or equivalent in their respective fields. Faith-based organizations are also eligible to apply.

Additional Requirements

1. The principal investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

2. The proposed intervention plan must be responsive to the goal of supporting the development of infant-toddler mental health in Early Head Start programs. The proposal should address the following intervention questions: What is the theoretical justification for the intervention? Is the intervention universal or selective? If selective, how will participants be identified? What is expected to be the preliminary evidence that the intervention is successful? What are the expected outcomes (benefits) for children and families? What are the mediating and moderating variables that are expected to influence these outcomes (logic model or theory of change)? How will the mediating and moderating variables and outcomes be measured? How will the age of child, gender, disability and other key child characteristics as well as family characteristics such as language and culture be addressed?

3. The proposal should specify the plan to measure implementation quality. The proposal should address how the following questions regarding intervention delivery will be assessed: How does the intervention deviate from existing procedures in the site? What are the specific services received by the child/family? Who gets what, from whom, and how much? To what extent is the intervention individualized? Who is most and least likely to participate? How are specific services linked with child and family outcomes? What are the barriers to implementation and how are challenges resolved?

4. The proposal should specify how the intervention will be documented. The proposal should address how the following will be assessed: To what extent can procedures be documented and manualized? What are the structures and supports necessary to implement the intervention? What is the level of education, training and supervision that is required of intervention staff? What are key activities that are conducted to include or gain support from community stakeholders, program administers, policy councils, program staff including teachers, home visitors and others, as well as parents and families? What are contextual variables that might influence how the intervention is implemented (*e.g.*, community factors such as culture, levels of poverty, available resources, etc.).

5. The proposal should specify what assessments of child outcomes are to be used and address how program staff will be trained to administer assessments.

6 .The applicant must apply the University's or nonprofit institution's off-campus research rates for indirect costs.

7. The applicant must enter into a partnership with an Early Head Start program for the purposes of conducting the research.

8. The application must contain a letter from the Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.

9. The principal investigator must agree to attend two meetings each year in Washington, DC, including Head Start's National Research Conference in the summer of 2004.

10. The budget should reflect travel funds for such purposes.

11. Contact information, including an e-mail address, for the principal investigator must be included in the application.

Project Duration: The announcement is soliciting applications for project periods of up to four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation of cooperative agreements funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through fourth 12-month budget periods.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

Priority Area 1.03 Head Start Graduate Student Grants

Eligible Applicants: Institutions of higher education on behalf of doctoral-level graduate students. Doctoral students must have completed their Master's Degree or equivalent in that field and submitted formal notification to ACYF by August 15, 2002. Faith-based organizations are also eligible to apply.

To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. Although the faculty mentor is listed as the Principal Investigator, this grant is intended for dissertation research for an individual student. Information about both the graduate student and the student's faculty mentor is required as part of this application. Any resultant grant award is not transferable to another student. The award may not be divided between two or more students.

Additional Requirements

- A university faculty member must serve as a mentor to the graduate student; this faculty member is listed as the ''Principal Investigator.'' The application must include a letter from this faculty member stating that s/he has reviewed and approved the application, the status of the project as dissertation research, the student's status in the doctoral program, and a description of how the faculty member will regularly monitor the student's work.
- The research project must be an independent study conducted by the individual graduate student or well-defined portions of a larger study currently being conducted by a faculty member. The graduate student must have primary responsibility for the study described in the application.
- The graduate student must enter into a partnership with a Head Start or Early Head Start program for the purposes of conducting the research.
- The application must contain (A) a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and (B) a letter certifying that the application has been reviewed and approved by the Policy Council.
- The graduate student applicant must agree to attend two meetings each year of the grant. The first meeting consists of the annual meeting for all Head Start Graduate Students. This grantee meeting is typically scheduled during the Summer or Fall of each year and is held in Washington, DC. The second meeting each year consists of the Biennial Head Start National Research Conference in Washington, DC (in June or July 2004) or the biennial meeting of the Society for Research in Child Development-SRCD (in April, 2003). The budget should reflect travel funds for the graduate student for each of these 4 meetings.
- Given the strong emphasis that is placed on supporting the mentor-student relationship, the faculty mentors are strongly encouraged to attend and participate in the activities of the annual grantee meeting for all Head Start Graduate Students. The budget should reflect travel funds for such purposes, as appropriate. However, if the faculty mentor does plan to attend the annual Graduate Student grantee meeting, but will utilize another source of travel funds, such arrangements should be noted in the application.
- Due to the small amount of the grant, the applicant is strongly encouraged to waive indirect costs.
- Contact information, including an e-mail address, for both the graduate student applicant and faculty mentor must be included in the application.
- The graduate student must write the application.

Project Duration: The announcement for priority area 1.03 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the University is applying, expects to receive his/her degree by the end of the first one-year budget period, the applicant should request a one-year project period only. A second year budget-period will not be granted if the student has graduated by the end of the first year. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share will range between $10,000–$20,000 for the first 12-month budget period or a maximum of $40,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that between 5 and 10 projects will be funded. It is unlikely that any individual university will be funded for more than one graduate student research grant if there are at least 10 applications from different institutions that qualify for support.

Part III. General Instructions for All Priority Areas

Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, using a comprehensive review of the current literature, justify how the research questions and the findings will add new knowledge to the field and specifically how the project will improve services for children and families.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the *proportion of data collection expected to be completed*. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Additional Information

Following are requests for additional information that need to be included in the application.

Staff and Position Data. Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles.

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan. Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Budget and Budget Justification. Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF cooperative agreement or grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that

budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, cooperative agreement or grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the cooperative agreement or grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the cooperative agreement or grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self explanatory]

Part IV. Competitive Criteria for Reviewers

A. Criteria for Priority Area 1.01: Head Start-University Partnerships

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 20 Points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the intervention and for its evaluation, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products.

2. Approach 45 Points

- The extent to which the intervention is adequately described, responsive to the key questions outlined in the background section above, and represents a research-based, cost effective model that meets the goal of using child outcomes data to support program improvement.
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes in the comprehensive domains of school readiness are the major focus of the study.
- The extent to which the planned research specifies the measures to be used, their psychometric properties, and the proposed analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study and the population to be studied.

• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the art.
• The extent to which the analytic techniques are appropriate for the question under consideration.
• The extent to which the proposed sample size is sufficient for the study.
• The scope of the project is reasonable for the funds available for these cooperative agreements.
• The extent to which the planned approach reflects sufficient input from and partnership with the Head Start program.
• The extent to which the planned approach includes techniques for successful transfer of the intervention and research to an additional site or sites.
• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
• The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
• The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.
• The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

B. Criteria for Priority Area 1.0–2: Early Head Start-University Partnerships

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 20 Points

• The research questions are clearly stated.
• The extent to which the proposed intervention is justified as meeting the needs of low-income children and families.
• The extent to which the research study makes a significant contribution to the knowledge base about supporting the mental health of low-income infants and toddlers and their families.
• The extent to which the literature review is current and comprehensive and justifies the intervention and evaluation plan. The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
• The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products.

2. Approach 45 Points

• The extent to which the intervention is adequately described and represents a research-based, cost effective quality program enhancement that meets the goal of supporting the mental health of children in Early Head Start.
• The extent to which the proposal is responsive to the questions outlined in the additional requirements section (especially items 2–5).
• The extent to which the research design is appropriate and sufficient for addressing the questions of the study (i.e., evaluation includes aspects of the intervention delivery (services delivered) and program context (structures and supports necessary to implement the intervention) as well as outcomes for children and families and associations between services and outcomes).
• The extent to which program-usable measures particularly of child functioning, are the major focus of the evaluation.
• The extent to which the planned research specifies the measures to be used, their psychometric properties, and the analyses to be conducted.
• The extent to which the planned measures are appropriate and sufficient for the questions of the study and the population to be studied.
• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the art.
• The extent to which the analytic techniques are appropriate for the question under consideration.
• The extent to which the proposed sample size is sufficient for the study.
• The scope of the project is reasonable for the funds available for these cooperative agreements.
• The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.
• The extent to which the planned approach includes techniques for successful documentation and dissemination.
• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the principal investigator and other key research staff possess the research expertise necessary to implement the intervention and conduct the evaluation as demonstrated in the application and information contained in their vitae.
• The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
• The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Early Head Start program staff and parents.
• The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

C. Criteria for Priority Area 1.03: Head Start Graduate Student Grants

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 25 Points

• The research questions are clearly stated.
• The extent to which the questions are of importance and relevance for low-income children's development and welfare.
• The extent to which the research study makes a significant contribution to the knowledge base.
• The extent to which the literature review is current and comprehensive and supports the need for the study.
• The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
• The extent to which the proposed project is appropriate to the student's level of ability and the stated time frame for completing the project.

2. Approach 40 Points

• The extent to which there is a discrete project designed by the graduate student. If the proposed project is part of a larger study designed by others, the approach section should clearly delineate the research component to be carried out by the student.
• The extent to which the research design is appropriate and sufficient for addressing the questions of the study.

• The extent to which the planned research specifies the measures to be used, their psychometric properties, and the proposed analyses to be conducted.

• The extent to which the planned measures have been shown to be appropriate and sufficient for the questions of the study, and the population to be studied.

• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques, and advance the state-of-the art, as appropriate.

• The extent to which the analytic techniques are appropriate for the question under consideration.

• The extent to which the proposed sample size is sufficient to answer the range of proposed research questions for the study.

• The scope of the project is reasonable for the funds available and feasible for the time frame specified.

• The extent to which the planned approach reflects sufficient written input from and partnership with the Head Start program.

• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the faculty mentor and graduate student possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.

• The principal investigator/faculty mentor has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.

• The extent to which the faculty mentor and graduate student reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.

• The adequacy of the time devoted to this project by the faculty mentor for mentoring the graduate student. The proposal should include evidence of the faculty mentor's commitment to mentoring the individual graduate student, and as appropriate, willingness to serve as a resource to the broader group of Head Start Graduate Students funded under this award.

D. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part IV of this announcement to review and score the applications, also taking into account responsiveness to other aspects of the announcement. The results of this review are a primary factor in making funding decisions. ACF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions. In selecting successful applicants, consideration may be given to other factors including but not limited to geographical distribution.

Part V. Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms. In order to be considered for a cooperative agreement or grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the cooperative agreement or grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Depending on the activities that are funded under this announcement, it is possible that the grantee institution may as a result of conducting the project have obligations or be impacted by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104–191).

Applicants will be covered by the terms of the Head Start Act (42 U.S.C. 9801 *et seq.*) including section 649(f) that ensures that ''all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.''

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0418). If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)-496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673. All necessary forms are available on the ACF Web site at *http://www.acf.dhhs.gov/programs/ofs/grants/form.htm*

B. Proposal Limits

The proposal should be double-spaced and single-sided on 8 ½″ x 11″ plain white paper, with 1'' margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the proposal (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact

information and the Table of Contents. The length of the proposal starting with page 1 as described above and including appendices and resumes must not exceed 60 pages. Anything over 60 pages will be removed and not considered by the reviewers. The project abstract should not be counted in the 60 pages. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants are encouraged to submit curriculum vitae using ''Biographical Sketch'' forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on ''Eligible Applicants'' will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus six copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

A complete application consists of the following items in this order:

Front Matter:

- Cover Letter
- Table of Contents
- Principal Investigator including telephone number, fax number and e-mail address.
- Project Abstract

(1) Application for Federal Assistance (SF 424, REV. 4–92);

(2) Budget information-Non-Construction Programs (SF424A&B REV.4–92);

(3) Budget Justification, including subcontract agency budgets;

(4) Letters (A) from the Head Start program certifying that the program is a research partner of the respective applicant and (B) that the Policy Council has reviewed and approved the application;

(5) Application Narrative and Appendices (not to exceed 60 pages);

(6) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–92;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone) (May 3, 2002.). Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102. (1–877) 663–0250. E-mail *hsr@xtria.com.*

Attention:

Application for Head Start-University Partnerships, or Application for Early Head Start-University Partnerships, or Application for Head Start Graduate Student Grants, as appropriate

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 5 p.m., Monday-Friday (excluding holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or e-mail. Therefore, applications faxed or e-mailed to ACF will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend an application deadline when justified by circumstances such as acts of God (*e.g.,* floods or hurricanes), widespread disruptions of mail service, or other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers: 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0925–0418 and 0970–0139.

Public reporting burden for this collection is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants

from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When SPOC comments are submitted directly to ACF, they should be addressed to: William Wilson, ACYF's Office of Grants Management, Room 2220 Switzer Building, 330 C Street SW., Washington, DC 20447, Attn: Head Start Discretionary Research Grants Announcement. A list of the Single Points of Contact for each State and Territory can be found on the Web site *http://www.whitehouse.gov/omb/grants/spoc.html*

Dated: February 26, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–5088 Filed 3–1–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01D–0294 and 01D–0295]

Agency Information Collection Activities; Announcement of OMB Approval; Providing Regulatory Submissions in Electronic Format for Food Additive and Color Additive Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Providing Regulatory Submissions in Electronic Format for Food Additive and Color Additive Petitions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 2001 (66 FR 59796), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0480. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4963 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0335]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Nutrition Labeling of Dietary Supplements on a ''Per Day'' Basis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Nutrition Labeling of Dietary Supplements on a 'Per Day' Basis'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 9, 2001 (66 FR 56687), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0395.

The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4964 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0053]

Determination of Regulatory Review Period for Purposes of Patent Extension; Diphenylmethane Diisocyanate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for diphenylmethane diisocyanate and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For food additives, the testing phase begins when a major health or environmental effects test involving the food additive begins and runs until the approval phase begins. The approval phase starts with the initial submission of a petition requesting the issuance of a regulation for use of the food additive and continues until FDA grants permission to market the food additive product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive diphenylmethane diisocyanate. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for diphenylmethane diisocyanate (U.S. Patent No. 4,968,514) from BF Goodrich Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of diphenylmethane diisocyanate represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for diphenylmethane diisocyanate is 1,326 days. Of this time, 739 days occurred during the testing phase of the regulatory review period, 587 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test (''test'') involving this food additive additive product was begun:* September 23, 1996. FDA has verified the applicant's claim that the test was begun on September 23, 1996.

2. *The date the petition requesting the issuance of a regulation for use of the additive (''petition'') was initially submitted with respect to the food additive additive product under section 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 348):* October 1, 1998. The applicant claims September 9, 1998, as the date the petition for diphenylmethane diisocyanate was initially submitted. However, FDA records indicate that the petition was submitted on October 1, 1998.

3. *The date the petition became effective:* May 9, 2000. FDA has verified the applicant's claim that the regulation for the additive became effective/commercial marketing was permitted on May 9, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 962 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by May 3, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–4965 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2002.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 7, 2002, 5:00 p.m.–7 p.m.; March 8, 2002; 8 a.m.–5 p.m.; March 9, 2002; 9 a.m. to 5 p.m.; March 10, 2002; 8 a.m.–10:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Phone: (301) 468–1100.

The meeting is open to the public.

Agenda: The agenda will focus on meeting with the management team from the Agency and the Bureau of Health Professions regarding the Administration's vision and goals for the National Health Service Corps and the designation of health professional shortage areas.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Agenda items and times are subject to change as priorities dictate.

Dated: February 27, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5152 Filed 2–28–02; 10:36 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: April 12, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5020 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Population Research Subcommittee, March 25, 2002, 8 a.m. to March 26, 2002, 5 p.m., Four Points By Sheraton, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 19, 2002, 67 FR 7385.

The meeting will be held on March 25, 2002. The meeting is closed to the public.

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5017 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 21, 2002.

Time 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, jsherril@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 1, 2002.

Time 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Teleplhone Conference Call)

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, mcarey@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 11, 2002.

Time 1 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, mcarey@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5019 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Functional Imaging Agents''.

Date: March 7, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5021 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: March 21, 2002.

Time: 12:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 10, 2002.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 11, 2002.

Time: 9 AM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5022 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: June 10–12, 2002.

Time: 1 am to 3 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Rocky Mountain Laboratories, Building 6, Conference Room 349, Hamilton, MT.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301–496–3006, tk9c@nih.gov.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbilogy and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2002.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5023 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 25, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis panel.

Date: March 29, 2002.
Time: 10 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date: May 2, 2002.
Time: 10 am. to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Contact Person: Mary Westcott, PhD, Scientific Review Administrator.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5024 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.
Date: April 3, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To accept the College Drinking Task-Force Report.
Place: 6000 Executive Blvd., Suite 400, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth R. Warren, PhD, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, kwarren@niaaa.nih.gov.

Information is also available on the Institute's/Center's home page: silk.nih.gov/silk/niaaa1/about/roster.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5025 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: April 8, 2002.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216 hhaigler@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5026 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 4, 2002.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 5, 2002.
Time: 11 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114,

MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1723, nelsonja@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: March 12–13, 2002.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Ranga Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, stuesses@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.

Date: March 12–13, 2002.

Time: 1 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, 301–435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael A. Oxman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, 301–435–3565, oxmanm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, 301–435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.

Date: March 13–14, 2002.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, siroccok@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, stuesses@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, 301–435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: March 14–15, 2002.

Time: 8:00 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, N.W., Washington, DC 20036.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael R. Schaefer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, (301) 435–2477, schaefem@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 4.

Date: March 14–15, 2002.

Time: 8:30 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, mccormim@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, stuesses@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5018 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Gossypol, Gossypol Acetic Acid and Derivatives Thereof and the Use Thereof for Treating Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any of U.S. patents 5,385,936 (01/31/1995) and 6,114,397 (09/05/2000) to Accu Therapeutics, Inc. of Rockville, Maryland. The prospective exclusive license may be limited to the development of compositions and methods utilizing gossypol, gossypol acetic acid and derivatives thereof in the treatment of human cancer. This Notice supercedes any prior Notices published in the **Federal Register** regarding this technology, including 61 FR 30915, Jun. 18, 1996 and 61 FR 67842, Dec. 24, 1996.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 3, 2002, will be considered.

ADDRESSES: Inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Licensing and Patent Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220.

SUPPLEMENTARY INFORMATION: The patents describe and claim methods utilizing gossypol, gossypol acetic acid and derivatives thereof for the treatment of cancer. Gossypol or its derivatives may be provided alone, in combination with each other, and/or in combination with other therapeutic agents. Particular cancers exemplified include adrenal, ovarian, thyroid, testicular, pituitary, prostate and breast cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives

written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.*, a completed Application for License to Public Health Service Inventions) in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: February 25, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–5027 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of Geldanamycin and Its Derivatives for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in: PCT Application PCT/US99/30631 (DHHS ref. No. E–151–98/1), ''Water-Insoluble Drug Delivery Systems;'' PCT/US99/16199 (DHHS ref. No. E–190–98/1), ''Water Soluble Drugs and Methods for their Production;'' US Patent Applications 60/246,258 (Provisional I, DHHS ref. No. E–289–00/0) 60/279,020 (Provisional II, DHHS ref. No. E–004–01/0), and 60/280,016 (Provisional III, DHHS ref. No. E–004–01/1) combined and converted into a PCT application PCT/US01/44172, filed on 11/6/01, ''Geldanamycin Derivatives Having Selective Affinity for HSP–90 and Methods for Using Same;'' and US Patent Application 60/280,078 (DHHS ref. No. E–050–00/1), ''Geldanamycin Derivatives and Method of Treating Cancer Using Same'', to Kosan Biosciences, Inc., having a place of business in Hayward, CA. The aforementioned patent rights have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 3, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Wendy R. Sanhai, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *sanhaiw@od.nih.gov;* Telephone: (301) 496–7056, ext. 244; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: These inventions describe and claim methods for the treatment of cancers. These methods utilize a class of compounds (Geldanamycin and derivatives thereof) as important inhibitors of HSP–90 and the HGF–SF–Met signaling pathway. Geldanamycin and its derivatives have been shown to inhibit HSP–90 chaperone function and down regulate of the expression of the Met receptor. Through these pathways these compounds have been implicated in the etiology of human cancers and the formation of secondary metastases.

The field of use may be limited to pharmaceutical use as anti-cancer agents in humans and animals.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 25, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–5028 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–08]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 Plaza, 451 Seventh Street, SW, Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Impaired Individuals is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD publish a description of and the cause for administrative actions against a HUD-approved mortgagee by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is given of administrative actions that have been taken by the Mortgagee Review Board from April 1, 2001 through September 30, 2001.

Title I Lenders and Title II Mortgagees that failed to comply with HUD/FHA requirements for the submission of an audited annual financial statement and/or payment of the annual recertification fee.

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001

Name	City	State
ABC Lending Inc	Coral Springs	FL
Affordable Home Funding	Fairport	NY
AFS Investments Inc	Cathedral City	CA
Air Academy Federal Credit Union	Colorado Springs	CO
Albany BK + TR Company N A	Chicago	IL
All Service Mortgage Inc	Woodstock	GA
Allfirst Bank	Harrisburg	PA
Alpha Mortgage Corporation Inc	Villa Park	IL
Ambank Illinois NA	Robinson	IL
Ameri-Cap Mortgage Group Inc	Plantation	FL
American Charter Mortgage	Downey	CA
American City Mortgage Corp	Carson	CA
American Diversified Mortgage	Laguna Hills	CA
American Family Financial Services	Atlanta	GA
American Home Bancorp	Huntington Beach	CA
American Lending Inc	Honolulu	HI
American Mortgage Express Fin	San Diego	CA
American United Mortgage Corporation	Greenwood Village	CO
Americanet Mortgage Corporation	Laguna Hills	CA
Amwest Mortgage Inc	Tahoe City	CA
Anheuser Busch Employees Cu	St Louis	MO
Anson Financial Inc	Bedford	TX
Apollo Funding LLC	Broomfield	CO
Approval First Mortgage Corp	Lakeland	FL
Approved Federal Savings Bank	Virginia Beach	VA
Approved Mortgage Financing	Jacksonville Beach	FL
Arlington National Bank	Arlington	TX
Associated Bank North	Wausau	WI
Assurety Mortgage Group Inc	Decatur	GA
Atlantic Financial Mortgage	Pleasanton	CA
Atlas Capital Corporation	Irvine	CA
Augusta Federal Savings Bank	Augusta	ME
Aviles and Associates Inc	Tampa	FL
Axiom Financial Inc	Orem	UT
Banco Popular De P R	San Juan	PR
Bank One NA	Columbus	OH
Bankers First Mortgage Company	Owings Mills	MD
BankVista	Sartell	MN
Barrington Capital Corporation	Irvine	CA
Barrons Mortgage Corp	Brea	CA
Bayside Financial Corp	Mission Viejo	CA
Beach Cities Mortgage Corporation	Santa Ana	CA
Big Island Mortgage Corp	Kailua Kona	HI
BOCC Funding Corporation	Reston	VA
Border State Bank Greenbush	Greenbush	MN
Brazoswood National Bank	Richwood	TX
California Capital Associates	San Diego	CA
California Home Lenders Inc	Long Beach	CA
California Trusted Funding Group	Los Angeles	CA
Callaway Bank	Fulton	MO
Carolina Home Mortgage Group Inc	Columbia	SC
Central New England Mortgage	Worcester	MA
Centurion Mortgage Inc	Kennesaw	GA
Certified Home Loans of Florida Inc	Miami	FL
Chase Bank of Texas NA	Houston	TX
Chemical Bank Montcalm	Stanton	MI
Chemical Bank North	Grayling	MI
Chisago State Bank	Chisago City	MN
Cima Home Loans	South Pasadena	CA
Citizens Bank of—Las Cruces	Las Cruces	NM
Citizens First Bank	El Dorado	AR
Citizens Savings Bank F.S.B.	Normal	IL
City National Bank West Virgina	Charleston	WV
Citywide Financial Group Inc	Long Beach	CA
Citywide Loan Services	Chatsworth	CA
Cloquet Co-Op CR UN	Cloquet	MN
CM Nationwide Mortgage Corp	Santa Ana	CA
CMA Services Group	Long Beach	CA
CNB National Bank	Jacksonville	FL
Coastal Capital Corp	Jericho	NY
Cohoes Savings Bank	Cohoes	NY
Colonial Bank	Des Peres	MO

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Columbia Equities LTD	Tarrytown	NY
Commerce Bank	Kansas City	MO
Community Bank-Dearborn	Dearborn	MI
Community Commerce Bank	Commerce	CA
Community Home Equities Corp	Hillside	NJ
Consolidated Consultants Inc	Las Vegas	NV
Consumer Electronic EMP FCU	Marion	IN
Coop CR NVL RVLT RDS	Fajarado	PR
Corona Hills Financial Inc	Boise	ID
Credicorp Inc	Chicago	IL
Crystal Mortgage Corp	Piscataway	NJ
D C Capital Group Inc	West Covina	CA
Dedham Institute for Savings	Denham	MA
Del Sol Mortgage	Carson	CA
DMI Inc	Boise	ID
Donald C Kinnsch	Lake Elsinore	CA
Downey Mutual Financial Inc	Downey	CA
DPS FInancial Services Inc	Laguna Hills	CA
Duluth Federal Employee CU	Duluth	MN
Eagle Mortgage Company	Omaha	NE
EFC Securitized Assets LC	Austin	TX
Elmira Savings Bank	Elmira	NY
Empire Funding Corp	Austin	TX
Enterprise Capital Corporation	Van Nuys	CA
Erwin Residential Group	Valley Village	CA
Euro Funding Corp	Downey	CA
Evergreen Pacific Mortgage Inc	Eugene	OR
Excel Mortgage Co	Brentwood	TN
Executive Mortgage Bankers LTD	Farmingdale	NY
Express Real Estate Finance Inc	Glendale	CA
F and M Bank	Hilbert	WI
F and M Bank Emporia	Emporia	VA
Farm Bureau Bank FSB	Sparks	NV
Farmers & Merchants State Bank	Waterloo	WI
FCMC Inc	Boulder	CO
Federal Mortgage Corporation	Waterford	MI
Ficus Financial Services Inc	Chicago	IL
Fidelity Funding Mortgage Corp	Richardson	TX
Fina Employees Federal C U	Dallas	TX
Financial Center West	Santa Ana	CA
First Allied Mortgage Inc	Walnut Creek	CA
First Atlantic Mtge LLC	Atlanta	GA
First Bank	Ketchikan	AK
First Bank of Conroe NA	Conroe	TX
First Community Bank	Pocahontas	AR
First Community Mortgage Company LLC	Henderson	NC
First Federal Savings Bank	Tuscaloosa	AL
First Financial Credit Union	West Covina	CA
First Funding Mortgage Corp	Charlotte	NC
First Home Mortgage Corp	Mount Prospect	IL
First Independence National Bank	Detroit	MI
First National Bank	El Dorado	AR
First National Bank	Ames	IA
First National Bank North	Sandstone	MN
First National Bank of Magnolia	Magnolia	AR
First National Bank Southeast	Reidsville	NC
First Priority Financial Inc	Dublin	CA
First Residential Mortgage	Birmingham	AL
First Savings and Loan Assn	Sea Isle	NJ
First Savings Bank	Perkasie	pa
First State Bank and Trust	Rainelle	WV
First Vantage Bank-Tri-Cities	Damascus	VA
Firstar Bank Milwaukee Na	Milwaukee	WI
Firstar Trust Company	Milwaukee	WI
Firstbank Oaklawn	Texarkana	TX
Fletcher Hills Financial	La Mesa	CA
Foremost Mortgage Company LLC	Houston	TX
Foremost Mortgage Company LP	Houston	TX
Fort Snelling Federal CR Union	MInneapolis	MN
Fortress Mortgage Inc	McLean	VA
Fortune Financial Mortgage Corp	Nashua	NH

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Fox Chase Federal Savings Bank	Philadelphia	PA
Friendship Community Bank	Ocala	FL
Fund America Investors Corp II	Englewood	CO
G A Investment Inc	Corona	CA
Gateway Services Inc	San Diego	CA
Genesis Federal Credit Union	Springfield	VA
Gold Coast Funding Inc	Irvine	CA
Grant County Bank	Ulysses	KS
Greater Boston Mortgage Inc	Jamaica Plain	MA
Greenback Funding Inc	South El Monte	CA
Greenridge Enterprises	Long Beach	CA
GT Funding Corporation	Lincoln	RI
Hacienda Mortgage Shop Inc	Fremont	CA
Headland National Bank	Headland	AL
Heartland National Bank	Herrin	IL
Highland Community Bank	Chicago	IL
Home Federal Bank FSB	Hamilton	OH
Home Financial Mortgage	Plymouth	MI
Home Lenders Financial Services Inc	Greenville	SC
Home Loan Specialists Inc	Laguna Hills	CA
Home Mortgagee Corporation	Levittown	NY
Home Owner Financial Plus	Tarzana	CA
Home Trust Company	Houston	TX
Hometown National Bank	New Albany	IN
Horizon Financial Corp	Fairfield	NJ
Household Financial Services Inc	Prospect Heights	IL
Howe Mortgage Corporation	Phoenix	AZ
In Time Funding LLC	Somerset	CA
Independent Bank of Oxford	Oxford	AL
Interamerican Financial Services Inc	Miami	FL
Interlinq Financial Corporation	Lake Elsinore	CA
Interstar Mortgage Corporation	Dallas	TX
Interstate Banc Inc	Columbus	OH
Interstate Mtge Direct Funding	Upland	CA
Ixonia State Bank	Ixonia	WI
J and R Mortgage Inc	San Mateo	CA
J S T Development Corp	Woodland Hills	CA
Jefferson Heritage Bank	Ballwin	MO
Jefferson Mortgage and Investment Inc	Birmingham	AL
JM Mortgage Corporation	Garden Grove	CA
Johnson Bank	Racine	WI
Joseph A Broderick Realty Corp	Santa Ana	CA
Kevin White Co Inc	Culver City	CA
Kevron Investments Inc	Westlake Village	CA
Keybank National Association	Boise	ID
King Company LLC	Boise	ID
Ladd Mortgage Company	Canton	CT
Lam Estate Corporation	Santa Ana	CA
Lee and Jackson Finan Services	Camarillo	CA
Lincoln Community Bank	Milwaukee	WI
Linear Capital Inc	Long Beach	CA
Llewellyn Edison Svgs Bank SLA	W Orange	NJ
Loancity-Com	San Jose	CA
Loans for Less Inc	Artesia	CA
Loanstar America Inc	Corona	CA
Madison Home Equities Inc	Lake Success	NY
Mansfield Metro Credit Union	Mansfield	OH
Manufacturers and Traders TR Co	Buffalo	NY
Mar Vista Mortgage	Whittier	CA
MC Mortgage Inc	Laguna Beach	CA
McAloon Mortgage Company Inc	Hollywood	FL
McClian County National Bank	Purcell	OK
MCM Funding Corp	Claremont	CA
Melcor Financial Group Inc	Granada Hills	CA
Member Service Federal CU	Little Rock	AR
Mesa Verde Mortgage Inc	Laguna Hills	CA
Metro Mortgage Inc	Las Cruces	NM
Metropolitan Mortgage FSC	Forestville	MD
MFC First National Bank	Iron River	MI
MFC First National Bank	Marquette	MI
MFC First National Bank	Menominee	MI

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Mid County Mortgage Bankers Corp	Norwalk	CT
Midland Bank	Lees Summit	MO
Midwest Funding Corporation	Downers Grove	IL
Millenium Mortgage Investors Corp	Miami	FL
Mortgage Capital Resource Company	Riverside	CA
Mortgage Consultant and Co Inc	Fairfield	NJ
Mortgage Lending LLC	Southaven	MS
Mortgage Network USA Inc	Burr Ridge	IL
Mortgage.Com Inc	Sunrise	FL
Murrieta Financial Inc	Lake Elsinore	CA
National Bank of Commerce	El Dorado	AR
National Bank of Alaska	Anchorage	AK
Nations First Financial LLC	Salt Lake City	UT
Neighborhood National Bank	San Diego	CA
Nicolas Mortgage and Financial Services	San Jose	CA
North County Real Estate Inc	Oceanside	CA
North Hawaii Community FCU	Honokaa	HI
Norwest Bank La Crosse NA	La Crosse	WI
Numax Mortgage Corporation	Germantown	MD
Old Kent Bank	Kalamazoo	MI
Old Kent Mortgage Company	Grand Rapids	MI
Omni Financial Services Inc	Atlanta	GA
P and A Financial Inc	Riverside	CA
Pace Financial Corp	Orlando	FL
Pacific Exchange Mortgage Lender	Woodland Hills	CA
Pacific Horizon Mortgage Corporation	Riverside	CA
Pacific One Bank NA	Kennewick	WA
Pacific Rim Funding Inc	Torrance	CA
Paladin Financial Inc	Austin	TX
Palma Corporation	Las Vegas	NV
Pan American Bank Fsb	San Mateo	CA
Pathfinder Mortgage Company	Phoenix	AZ
Peoples Bank-Point Pleasant	Point Pleasant	WV
Peoples State Bank	Wells	MN
Pillar Financial Corporation	Waterford	MI
Pinnacle Bank	Lexington	NE
Plaza Mortgage Company Inc	Metairie	LA
PMA Mortgage Inc	Long Beach	CA
Preferred Bank	Big Lake	MN
Premier Mortgage Services	Salt Lake City	UT
Primary Capital Inc	Irvine	CA
Primerchant Capital Corporation	Sherman Oaks	CA
Professional Invest and Fin Gr	Monterey Park	CA
Providence Financial Corporation Inc	Austin	TX
Quality Funding Group	San Diego	CA
Quality Mortgage Group	Oxford	CA
Queens County Savings Bank	Flushing	NY
R M G Funding Group Inc dba National Ban	Canoga Park	CA
Reaching Another Dimension Fin Ser Inc	Sunrise	FL
Real Estate Lenders Inc	Santa Clarita	CA
Real Estate Mortgage Acceptance	Los Angeles	CA
Referral Finance-Com Corporation	Austin	TX
Republic Bank	Ann Arbor	MI
Resource Bank	Virginia Beach	VA
Riverside Credit Union	Buffalo	NY
RMB Investment Inc	Marina Del Rey	CA
Ron Simpson and Associates Inc	Southfield	MI
Roslyn National Mortgage	Melville	NY
Royal Mortgage Bankers Inc	Great Neck	NY
Russell Country Federal Credit Union	Great Falls	MT
Ryans Express Equities Corp	Eas Meadow	NY
Sanmar Financial Group Inc	Long Beach	CA
Saromar Enterprises Inc	Glendale	CA
SCE Federal Credit Union	Irwindale	CA
Scripps Bank	La Jolla	CA
SFA Capital Ventures Inc	Northridge	CA
Signature Bank	Bad Axe	MI
Smith Haven Mortgage Corporation	Melville	NY
Sound Federal S+L Asso	Mamaroneck	NY
Southern New Hampshire Bank and Trust Co	Manchester	NH
Southwest Cedar Rapids Com FCU	Cedar Rapids	IA

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Space Coast Credit Union	Melbourne	FL
St Edmonds Federal SB	Philadelphia	PA
Standard Federal Bank	Troy	MI
State Bank	West Fargo	ND
State Bank	Richmond	MN
State Bank	Lucan	MN
State Bank	Bricelyn	MN
State Bank La Crosse	Sparta	WI
Statewide Savings Bank SLA	Jersey City	NJ
Sterling Funding Corporation	Rancho Santa Margar	CA
Summit Bank	Arkadelphia	AR
Summit Financial Corporation	Irvine	CA
Summit Mortgage Corporation	Irvine	CA
Sunshine Funding Company	Winter Park	FL
Sunstar Mortgage Corporation	Rancho Cucamonga	CA
TCF National Bank	Minnepolis	MN
Texas Transportation Federal CU	San Antonio	TX
The Money Store Kentucky Inc	Louisville	KY
The Mortgage Bank Inc	Miami	FL
The Park Bank	Madison	WI
The Savings Bank	Utica	NY
Towne And Country Mortgage Corp	North Huntingdon	PA
Tri City Bank TR CO	Blountville	TN
Triple S Federal Credit Union	Sacramento	CA
Truong and Co Inc	Canoga	CA
Trust Company Bank NE Georgia	Madison	GA
Union Capital Funding Inc	Los Angeles	CA
United Companies Financial Cor	Baton Rouge	LA
United Minnesota Bank	New London	MN
United Missouri Bank NA	Kansas City	MO
Universal Bancorp	Laguna Hills	CA
Universal Lending Corp	Sacramento	CA
US Bank Trust National Assoc-Arizona	Phoenix	AZ
Valley Heights Funding Inc	Moreno Valley	CA
VIP Funding Ltd	Richmond Hill	NY
Wallick nd Volk Inc	Cheyenne	WY
Webtd Com	Woodland Hills	CA
West Chicago State Bank	West Chicago	IL
West Coast Guaranty Bank NA	Sarasota	FL
Western Home Lending Corporation	Los Angeles	CA
Western Home Mortgage Corp	Irvine	CA
Western Sierra National Bank	Cameron Park	CA
Western United Financial	Tustin	CA
Westland Savings Bank SA	Tomah	WI
Winterwood Mortgage Group	Greenwood	IN
WY HY Federal Credit Union	Cheyenne	WY
Wyoming Employees Federal C U	Cheyenne	WY
Zapata National Bank	Zapata	TX

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001

Name	City	State
Absolute Brokerage Services Ltd	White Plains	NY
Absolute Mortgage Company Inc	Tempe	AZ
Access Mortgage Corp	Oklahoma City	OK
Accord Mortgage Lenders Corp	Miami	FL
Accredited Mortgage Inc	Kissimmee	FL
ACF Partners	Pasadena	CA
Admiral Funding LLC	Birmingham	AL
Advanced Mortgage LLC	Henderson	NV
Advantage Home Loan Counselors Inc	La Mesa	CA
Advantage Mortgage Corporation	Naperville	IL
Advantage Mortgage Inc	Colorado Springs	CO
Advantage Plus Financial Inc	Santa Maria	CA
Affirmative Mortgage Loans Inc	Largo	FL
AFS Investments Inc	Cathedral City	CA
Alert Financial Services Inc	Parma Heights	OH
All American Mortgage Services Inc	Las Vegas	NV

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
All Cities Funding Inc	Downey	CA
Alliance Bank FSB	Somerset	KY
Alliance West Mortgage Corp	Scottsdale	AZ
Altimate Discount Mortgage	Willow Grove	PA
Altiva Financial Corporation	Atlanta	GA
AM Mortgage Brokers Inc	Boulder	CO
AMB Mortgage Corporation	Maitland	FL
Ameri—Cap Mortgage Group Inc	Plantation	FL
American Advantage Mortgage Inc	Baltimore	MD
American Alliance Financial Services	Indianapolis	IN
American Diversified Mortgage Corp	Laguna Hills	CA
American Family Financial Services Inc	Atlanta	GA
American Family Mortgage Co	Palos Heights	IL
American Funding Mortgage Corp	Miami	FL
American Home Mtg and Assoc	Weston	FL
American Lending Alliance Inc	Honolulu	HI
American Loans	Murray	UT
American Mortgage Capital Inc	Plantation	FL
American Mortgage Group LLC	Owensboro	KY
American Mortgage Solutions Inc	Columbus	OH
American National Bank-Vincennes	Vincennes	IN
American National Group Inc	Corona	CA
American Pioneer Life Ins	Orlando	FL
American Security Financial Corporation	Modesto	CA
American Trust Mortgage Inc	Chicago	IL
American United Mtg Corp	Greenwood Village	CO
Americapital Service Corp	Atlanta	GA
Ameristar Mortgage Corp	Atlanta	GA
Amresco Capital LP	Dallas	TX
Amwest Mortgage Inc	Tahoe City	CA
Anchor Bank	Myrtle Beach	SC
Andrews Charles Mortgage Co	Rockford	IL
Anneler Mortgage Services LLC	Colorado Springs	CO
Anson Financial Inc	Bedford	TX
Apex Financial Group Inc	Brandon	FL
Ascent Mortgage Inc	Denver	CO
Assured Mortgage Co LLC	St Paul	MN
Assured Mortgage Corp	Independence	OH
Athens First Bank and Trust Company	Athens	GA
Atlantic Financial Mortgage	Pleasanton	CA
Atlantic International Mtg Co	Tampa	FL
Atlantic Vanguard Mortgage	Altamonte Springs	FL
Atlas Capital Corporation	Irvine	CA
Avalon Financial Consultants LLC	Dunwoody	GA
Bank of Canton	Canton	GA
Bank of Canton	Canton	GA
Bank of Coweta	Newnan	GA
Bank of Hazlehurst	Hazlehurst	GA
Bank of Homewood	Homewood	IL
Bank of Illinois	Normal	IL
Bank of Lenox	Lenox	GA
Bank of Mount Vernon	Mount Vernon	KY
Bank of Prattville	Prattville	AL
Bank of Rogers	Rogers	AR
Bank of Stockdale	Bakersfield	CA
Bank of Tuscaloosa	Tuscaloosa	AL
Bank of Ventura	Ventura	CA
Bank One–NA	Park Ridge	IL
Bank Star One	Fulton	MO
Bankers First Mortgage Co	Owings Mills	MD
Bankers Residential Mortgage Corp	Richardson	TX
Bankline Mortgage Corp	Greenville	SC
Barbour County Bank	Philippi	WV
Barrington Bank and Trust Co NA	Barrington	IL
Baylor Finance and Mortgage Inc	Dallas	TX
Beach Cities Mortgage Corporation	Santa Ana	CA
Berean Federal Savings Bank	Philadelphia	PA
Big Island Mortgage Corp	Kailua-Kona	HI
Black Diamond Savings Bank	Norton	VA
Blue Ridge Bank and Trust Co	Kansas City	MO
Boise EMPL Credit Union	International Falls	MN

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Boyer Mortgage Corporation	Kenner	LA
BRDB Inc	San Diego	CA
Bright Financial Corp	Walnut	CA
Buyers Edge Mortgage Corp	Alexandria	VA
CFM Mortgage Inc	College Park	GA
Cabarrus Bank North Carolina	Cornelius	NC
Cache Mortgage Corporation	Logan	UT
California Trusted Funding Group	Los Angeles	CA
Callaway Bank	Columbia	MO
Cambridge Savings Bank	Cambridge	OH
Capital Family Mortgage Co	Geneva	IL
Capital Mortgage Network Inc	Rochester	NY
Capitaland Funding Group LLC	Malta	NY
Capstone Lending Corp	Los Angeles	CA
Capstone Mortgage Corporation	Oak Park	MI
Cargill Bank CT	West Springfield	MA
Catskill Savings Bank	Catskill	NY
CB and T Bank	Warner Robbins	GA
Centennial Bankers Mortgage LLC	Windsor	CO
Centra Bank Inc	Morgantown	WV
Central Mortgage and Finance LLC	Beltsville	MD
Chase Bank of Texas NA	Houston	TX
Chester National Bank	Perryville	MO
Chicago Mortgage Corporation	Chicago	IL
Chinchiolo Realtors Inc	Stockton	CA
Chisago State Bank	Chisago City	MN
CHO Hung Bank of New York	New York City	NY
Cima Home Loans	South Pasadena	CA
Citimortgage Inc Ballwin	Ballwin	MO
Citizens and Merchants St Bank	Douglasville	GA
Citizens Bank and Trust West Georgia	Carrollton	GA
Citizens Credit Services Inc	Clearwater	FL
Citizens First Bank	El Dorado	AR
Citizens Mortgage Service Co	Fort Washington	PA
Citizens Southern Bank	Beckley	WV
Citizens State Bank Hamilton	Hamilton	MT
City Mortgage Corp	Clifton	NJ
Citywide Loan Services	Chatsworth	CA
Clark Financial	Rolling Meadows	IL
Classic Mortgage LLC	Maywood	NJ
CM Nationwide Mortgage Corp	Santa Ana	CA
Co-op Credit Union Montevideo	Montevideo	MN
Coastline Mortgage Inc	Carlsbad	CA
Cohoes Savings Bank	Cohoes	NY
Cohutta Banking Company	Chatsworth	GA
Columbus Bank and Trust Co	Columbus	GA
Columbus Capital Mortgage LTD	Reynoldsburg	OH
Comfort Mortgage Corporation	Roselle Park	NJ
Commercial Bank	Leadville	CO
Commercial Bank	Thomasville	GA
Commonwealth National MTG Corp	Livonia	MI
Community Bank	Preston	IA
Community Bank and Trust	Dothan	AL
Community Bank Tri-County	Waldorf	MD
Community Capital Bank	Brooklyn	NY
Community First Bank	Carrollton	GA
Community First Bank	Maysville	KY
Community First Mortgage	Sylva	NC
Community First National Bank	Rock Springs	WY
Community Mut Sav Bank So NY	White Plains	NY
Community Service Programs W Alabama Inc	Tuscaloosa	AL
Conduit Financial Services Inc	Chicago	IL
Consolidated Financial Inc	Miami	FL
Construction Funding Corporation	Schaumburg	IL
Continental Capital Funding Corp	Royal Palm Beach	FL
Contour Mortgage Corporation	Westbury	NY
Corstan Inc	Las Vegas	NV
Covenant Mortgage Corp	Arlington Heights	IL
Coventry Mortgage	Boise	ID
Covest Banc	McHenry	IL
Creative Mortgage Services Inc	Annapolis	MD

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Creditland Mortgage-Com Inc	Woodbury	NJ
Creekside Mortgage Corp	Bridgeville	PA
Cypress Financial Mortgage Corp Inc	Davie	FL
Cypress Mortgage	Madera	CA
D and N Bank FSB	Hancock	MI
D C Capital Group Inc	Temple City	CA
D Sackett Inc	Santa Rosa	CA
DDM Mortgage Corp	Raleigh	NC
Dedham Institution for Savings	Dedham	MA
Deepak Mehra	Roswell	GA
Del Sol Mortgage	Carson	CA
Diamond Lenders Group Corp	Minneapolis	MN
Diversified Mortgage Capital Inc	Encino	CA
Donald Webber Mortgage Co.	Highland	IN
Draper Bank and Trust	Draper	UT
Drexel Mortgage Corp	Richmond Hill	NY
Drovers and Mechanics Bank	York	PA
Dupaco Community Credit Union	Dubuque	IA
DVI Mortgage Funding Inc	Jamison	PA
Dynamic Mortgage Co	Houston	TX
EAA Capital Company LLC	Silver Spring	MD
Eagle Mortgage Funding	Cincinnati	OH
Eagle Mortgage Incorporated	Sandy	UT
Eagle Trust Mortgage Corp	Miami	FL
Eastern Mortgage Associates Inc	Miami	FL
Edmond Bank and Trust	Edmond	OK
ELB Mortgage Brokers Inc	Northbrook	IL
Empire Bank	Springfield	MO
Empire Mortgage LLC	Bowling Green	KY
Emporia State Bank and Tr Co	Emporia	KS
Enhanced Financial Services Incorporated	Portland	OR
Enterprise Home Loans	Encino	CA
Equality State Bank	Cheyenne	WY
Equitable Mortgage Corporation	Columbus	OH
Equity First Funding Corp	Salt Lake City	UT
Erwin Residential Group	Valley Village	CA
Euro Funding Corporation	Cerritos	CA
Excel Funding Inc	Vancouver	WA
Excel Mortgage Company	Brentwood	TN
Executive Mortgage Bankers Ltd	Farmingdale	NY
Express Financial Centre LC	Salt Lake City	UT
Express Financial Corp	Boca Raton	FL
Express Funding LLC	San Diego	CA
Express Mortgage Inc	Chicago	IL
Express Real Estate Finance Inc	Glendale	CA
Family Federal Savings FA	Fitchburg	MA
Farm Bureau Bank FSB	Sparks	NV
Farmers and Traders State Bank	Jacksonville	IL
Farmers Merchants State Bank	Boise	ID
Federal Mortgage Corporation	Waterford	MI
Ficus Financial Services	Chicago	IL
Fidelity and Company of Georgia	Atlanta	GA
Fidelity Funding Mortgage Corp	Richardson	TX
Fidelity Mortgage and Funding	Memphis	TN
Fidelity Mortgage Services Corporation	Kingwood	TX
Financial Center West Inc	Santa Ana	CA
Financial Guarantee	Westfield	NJ
Financial Resource Center Mortgage Inc	Schaumburg	IL
Firefighters Funding Inc	Santa Ana	CA
First Advantage Mortgage Inc	Tucker	GA
First American Mortgage Corp	Indianapolis	IN
First Bank of Central Jersey	North Brunswick	NJ
First Bank of Marietta	Marietta	OH
First Bank of the Americas	Chicago	IL
First Capital Mortgage Corp	Beachwood	OH
First Choice Bank	Greeley	CO
First Choice Mortgage Company	Grand Blanc	MI
First City Bank and Trust Co	Hopkinsville	KY
First Class Mortgage Corporation	Yorba Linda	CA
First Coastal Bank	Virginia Beach	VA
First Coastal Mortgage Corp	Metairie	LA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
First Commerce Bank Colorado	Colorado Springs	CO
First Commercial Bank	Birmingham	AL
First Commercial Bank Huntsville	Huntsville	AL
First Community Bank	Tifton	GA
First Community Bank Cherokee	Woodstock	GA
First Community Mortgage Company LLC	Henderson	NC
First Credit Mortgage LLC	Chandler	AZ
First Eagle Mortgage Corporation	Silver Spring	MD
First Federal Community Credit Union	Cedar Rapids	IA
First Federal Savings ALA	East Hartford	CT
First Fidelity Bank Na	Oklahoma City	OK
First Financial Mortgage Corp	Akron	OH
First Gaston Bank of North Carolina	Gastonia	NC
First Georgia Community Bank	Jackson	GA
First Integrity Mortgage Co	Closter	NJ
First Investment Company	Columbus	OH
First Investors Mortgage Corp	Madison	MS
First Kentucky Bank	Sturgis	KY
First Kentucky Federal Svgs AL	Central City	KY
First Liberty National Bank	Bethesda	MD
First Mountain Bank	Big Bear Lake	CA
First National Bank	Layton	UT
First National Bank	Magnolia	AR
First National Bank	El Dorado	AR
First National Bank and Tr Co	Carbondale	IL
First National Bank Blue Island	Blue Island	IL
First National Bank Dona Ana Co	Las Cruces	NM
First National Bank Fort Myers	Fort Myers	FL
First National Bank Joliet	Joliet	IL
First National Bank of Herminie	Herminie	PA
First National Bank of McCook	McCook	NE
First National Bank of Springdale	Springdale	AR
First National Bank Pryor Crk	Pryor	OK
First National Funding Corp	Rochelle Park	NJ
First Natl Bank of Boulder County	Boulder	CO
First Natl Bank of Shelby	Shelby	OH
First Rate Mortgage Corporation	Green Bay	WI
First Republic Bank	Rayville	LA
First Republic Mortgage Corp	Nashville	TN
First Residential Bancorp	Chicago	IL
First Savings Bank of Virginia	Springfield	VA
First Source Financial Grp	Oklahoma City	OK
First State Bank	Barboursville	WV
First State Bank Harrah	Harrah	OK
First State Bank and Trust Co	Valdosta	GA
First State Bank and Trust Co	Shawnee	OK
First State Bank of Pekin	Pekin	IL
First State Bank Rolla	Rolla	ND
First Texas Bank	Lampasas	TX
First United Bank and Trust	Oakland	MD
First United Mortgage Corp	Dyer	IN
First Western Bank Trust Co	Rogers	AR
Firstar Trust Co	Milwaukee	WI
Firstbank	Texarkana	TX
Firstier Bank	Northglenn	CO
Firstplus Financial Inc	Salt Lake City	UT
Floridian Mortgage Corp	Hollywood	FL
Foremost Mortgage Company LP	Houston	TX
Fortune Financial Mortgage Corp	Nashua	NH
Founders Bank of Arizona	Scottsdale	AZ
Founders Trust National Bank	Sioux Falls	SD
Four M Financial Inc	Orland Park	IL
Freedom Financial Services of Arkansas	Little Rock	AR
Fremont National Bank	Canon City	CO
Frontier Funding Corporation	Los Angeles	CA
Funding One Mortgage Corporation	Hayward	CA
Fundmor Inc	Annandale	VA
G L Byron and Company	Brighton	MI
Gainesville Bank and Trust	Gainesville	GA
Garcia Financial Service Inc	Santa Maria	CA
Gateway Home Mortgage	Kirkland	WA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Gateway Services Inc	San Diego	CA
Gerald J Stanfield Inc	Laguna Hills	CA
Glacier Bank of Eureka	Eureka	MT
Global Holdings V LLC	Federal Way	WA
Global Mortgage Funding LLC	New Orleans	LA
GMS Mortgage Inc	Baton Rouge	LA
Gotham Mortgage Corp	Boca Raton	FL
Great American FED Savings ALA	Pittsburgh	PA
Greater Colorado Mortgage Inc	Aurora	CO
Greenback Funding Inc	South EL Monte	CA
Greenfield Mortgage Company	Southfield	MI
Greenridge Enterprises	Long Beach	CA
Group Mortgage Inc	Miami	FL
GT Funding Corporation	Lincoln	RI
Guaranteed Equity Lenders Inc	Timonium	MD
Guardian Fidelity Mortgage Inc	Rock Hill	SC
Guardian Life Ins Co America	New York	NY
Gulfstream Financial Services	Grand Rapids	MI
Gulfstream Mortgage Corp	North Miami	FL
Gull Mortgage Inc	Lomita	CA
Hacienda Mortgage Shop Inc	Fremont	CA
Hamilton Financial Corporation	San Francisco	CA
Hansen Financial Corporation	Annapolis	MD
Harbor Financial Mortgage Corp	Houston	TX
Harmony Mortgage Inc	Santa Ana	CA
Harvard Home Mortgage Inc	Annapolis	MD
Helmick Mortgage Corporation	Delta	CO
Help U Sell of Staten Island Inc	Staten Island	NY
Heritage Bank	Tempe	AZ
Heritage Bank of Schaumburg	Schaumburg	IL
Heritage Cooperative Bank	Salem	MA
Heritage USA Mortgage LLC	Memphis	TN
Hi-Tech Financial Service Inc	Los Angeles	CA
HMN Mortgage Services Inc	Brooklyn Park	MN
HMS Capital Inc	Calabasas	CA
HNB Bank NA	Harlan	KY
Home Advantage Mortgage Corp	Littleton	MA
Home Federal Savings and Loan	Oklahoma City	OK
Home Federal Savings Bank	Hagerstown	MD
Home Lenders Financial Services Inc	Greenville	SC
Home Owner Financial Plus	Tarzana	CA
Home Owners Funding Corp AME	Dallas	TX
Home Quest Mortgage LC	Salt Lake	UT
Home Service Associates Inc	Campbell	CA
Homefn Mortgage Corporation	Atlanta	GA
Homefront Financial Services Inc	Santa Ana	CA
Homestead Real Estate Fin Inc	San Ramon	CA
Horizons Financial Services Inc	Citrus Heights	CA
Hughes Financial Group Inc	Sonora	CA
I Real Estate Corporation	Sacramento	CA
Illinois Mortgage Consultants Inc	Hinsdale	IL
In Time Funding LLC	Somerset	CA
Inez Deposit Bank	Inez	KY
Integrity Mortgage Solutions Inc	Lilburn	GA
Interamerican First Mortgage Corporation	Miami	FL
Interlinq Financial Corporation	Lake Elsinore	CA
Interstar Mortgage Corporation	Dallas	TX
Interstate Banc Inc	Columbus	OH
Interstate Mtg Direct Funding	Upland	CA
Iron River National Bank	Iron River	MI
Itasca State Bank	Grand Rapids	MN
Jamaica Savings Bank FSB	Lynbrook	NY
Javazon Financial Services Inc	Denver	CO
JD Hutton Inc	Salt Lake City	UT
Jefferson Heritage Bank	Ballwin	MO
Jefferson Mortgage Group LTD	Oakton	VA
Jeffmortgage Inc	Haddon Heights	NJ
Johnson and Assoc South States Mtg LLC	Birmingham	AL
Johnson and Associates Mtg Co	Birmingham	AL
Katmar Investments LLC	Denver	CO
Kellogg Company Employees Federal CU	Omaha	NE

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Ladd Mortgage Company	Canton	CT
Lakeside Bank	Chicago	IL
Landmark Community Bank	Ramsey	MN
LaSalle Bank FSB	Chicago	IL
Leader Mortgage Loan Corp	Medford	OR
Leading Edge LLC	Alexandria	VA
Lendex Inc	Dallas	TX
Lending Resource Inc	New Rochelle	NY
Lendingstar Mortgage Inc	Calumet City	IL
Lexus Mortgage Inc	Dallas	TX
Liberty Financial Group Inc	Montclair	CA
Liberty Star Mortgage Inc	Houston	TX
Lincoln Community Bank	Milwaukee	WI
Linear Capital Inc	Long Beach	CA
Llanfare Mortgage Company LLC	Denver	CO
Llewellyn-Edison Savings Bank SLA	West Orange	NJ
Loans for Less Inc	Artesia	CA
Loanstar America Inc	Corona	CA
Long Island Commercial Bank	Islandia	NY
Longstreet Capital LLC	Raleigh	NC
Los Angeles Federal Credit Union	Glendale	CA
M and I Bank of Burlington	Burlington	WI
M and I Bank of Racine	Racine	WI
M and I Lake Country Bank	Hartland	WI
M and I Lakeview Bank	Sheboygan	WI
M and I Mid State Bank	Stevens Point	WI
Malone-Gordon Mortgage and Investments	Tuscaloosa	AL
Mar Vista Mortgage Inc	Whittier	CA
Marine Air Federal C U	Santa Ana	CA
Maritime Financial Services Inc	West Covina	CA
Market Building and Saving Co	Cincinnati	OH
Market Street Lending LTD	Columbus	OH
Mayflower Financial Services LLC	Colchester	CT
MBA Mortgage Corporation	Millersville	MD
MBS Financial Inc	Fairfax	VA
McIlroy Bank and Trust	Fayetteville	AR
MCM Funding Corp	Claremont	CA
Members Mortgage Corporation	Wyndmoor	PA
Members Mortgage Corporation	Garden City	NY
Mentor Financial LLC	Farmington	MI
Mercantile Bank FSB	Davenport	IA
Mercantile Bank Kentucky	Paducah	KY
Merchants and Planters Bank	Camden	AR
Merrit Mortgage Funding Inc	Columbus	OH
Mesa Verde Inc	Laguna Hills	CA
Metropolitan Home Mortgage Cor of NY	Jericho	NY
MFC First National Bank	Marquette	MI
MFC First National Bank	Menominee	MI
Michigan Heritage Bank	Farmington Hills	MI
Mid County Mortgage Bankers Corp	Norwalk	CT
Midland Mutual Life Ins Co	Columbus	OH
Millennium Bank NA	Reston	VA
Minden Bank and Trust Company	Minden	LA
Money Guard Financial Inc	CHicago	IL
Money Line Classic Corp	Whittier	CA
Money Source Inc	Prairieville	LA
Moneyline Financial Corp	Hialeah	FL
Monument Mortgage Corporation	Largo	MD
Mortgage Company Inc	Stillwater	MN
Mortgage Finance of-America Inc	Miami	FL
Mortgage Group Inc	Littleton	CO
Mortgage Investors of Orlando Corp	Orlando	FL
Mortgage Junction Inc	Apopka	FL
Mortgage Lending LLC	Southaven	MS
Mortgage Lending Professionals LLC	Fort Collins	CO
Mortgage Money Doctors	Philadelphia	PA
Mortgage Money Mart Inc	Edison	NJ
Mortgage Network USA Inc	Burr Ridge	IL
Mortgage Partners Inc	Springfield	MO
Mortgage Professionals	West Des Moines	IA
Mortgage Reserve Corporation	Fort Lauderdale	FL

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Mortgage Resources Inc	Spokane	WA
Mortgage Servicing Company	Murray	UT
Mortgage.com Inc	Sunrise	FL
Motor Parts Federal Credit Union	Auburn Hills	MI
Mountain Pacific Mortgage	San Diego	CA
Mountainview Mortgage Corp	Salt Lake City	UT
Municipal Mortgage Corp	Miami	FL
Murrieta Financial Inc	Lake Elsinore	CA
Mutual Federal Savings Bank	Atlanta	GA
N K Equities	Ozone Park	NY
Naf Inc	Dallas	TX
National Bank	Hillsboro	IL
National Bank Commerce Trust Svgs Assn	Lincoln	NE
National Mortgage Co	Englewood	CO
Nationcorp Mortgage and Fin Services Inc	Baton Rouge	LA
Nationwide Residential Capital LLC	Santa Ana	CA
NC Funding Inc	Irvine	CA
New Community Fed Credit Union	Newark	NJ
New Farmers National Bank	Glasgow	KY
New Milford Bank and Trust	New Milford	CT
Neway Financial Services	No Plainfield	NJ
Newscope Financial Partners LLC	Irvine	CA
Northeastern Mortgage Ser Inc	Tyngsboro	MA
Northfield Federal Savings Bank	Baltimore	MD
Northfield Savings Bank FSB	Staten Island	NY
Northgate Funding Co	Albany	NY
Northland Mortgage Company	Anchorage	AK
Northland Security Bank	Ramsey	MN
Northwest Fidelity Mortgage Corp	Morton Grove	IL
Northwest Mortgage Professionals Inc	Silverdale	WA
Norwest Mortgage Mass Inc	Danvers	MA
Numax Mortgage Corporation	Germantown	MD
NW LLC	University Place	WA
Oceanmark Bank FSB–FDIC	North Miami Beach	FL
Ocwen Financial Services Inc	West Palm Beach	CA
Oklahoma Central Credit Union	Tulsa	OK
Old Castle Mortgage Inc	Alameda	CA
Old Florida Mortgage Inc	Boca Raton	FL
Old Kent Bank	Grand Rapids	MI
Olympic Mortgage Group Inc	McLean	VA
Omega Mortgage and Fin Corp	Saint Paul	MN
Omni Financial Services LLC	Birmingham	AL
One Valley Bank—Shenandoah	Lexington	VA
One Valley Bank Oak Hill Inc	Oak Hill	WV
Onloan.com Inc	Fort Lauderdale	FL
Origin Mortgage LLC	Austin	TX
Owensboro National Bank	Owensboro	KY
Pacific Capital Mortgage	Scottsdale	AZ
Pacific Exchange Mtg Lender	Woodland Hills	CA
Pacific Mortgage Inc	Ft Collins	CO
Pacific Rim Funding Inc	Torrance	CA
Pacific Southwest Bank FSB	Dallas	TX
Pacific State Bank	Stockton	CA
Palma Corporation	Las Vegas	NV
Pan American Bank FSB	San Mateo	CA
Park Bank	Madison	WI
Parkway Mortgage Inc	Kenilworth	NJ
Pathfinder Mortgage Company	Phoenix	AZ
PCLoans.com Inc	Millersville	MD
Peach State Funding Inc	Atlanta	GA
Peachtree National Bank	Peachtree City	GA
Peak National Bank	Evergreen	CO
Peoples Bank	Taos	NM
Peoples Bank Murray	Murray	KY
Peoples Benefit Life Insurance Co	Louisville	KY
Peoples Commercial Bank	Winchester	KY
Peoples State Bank	Fairmount	ND
Pinnacle Bank	Lexington	NE
Pinnacle Residential Funding	Sacramento	CA
Pinnacle Residential Services	Westlake	OH
Pioneer National Bank	Yakima	WA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Placer Savings and Loan Assn	Auburn	CA
Plains National Bank W TX	Lubbock	TX
Platinum Mortgage of Louisiana	Baton Rouge	LA
Plaza Mortgage Services LLC	Kansas City	MO
PMCC Mortgage Corp	Roslyn Heights	NY
Portland Federal Employees Credit Union	Portland	OR
Potomac Mortgage Corporation	Clinton	MD
Preferred Bank	Big Lake	MN
Preferred Funding Inc	Kirkland	WA
Preferred Mortgage Associates	Downers Grove	IL
Premier Capital Mortgage LLC	Lawrence	KS
Premier First Funding Group Inc	Hollywood	FL
Premier Lending Corporation	Marietta	GA
Premier Mortgage Corporation	Draper	UT
Premier Mortgage Corporation	Omaha	NE
Premier National Bank	Fishkill	NY
Prime Funding Corporation	North Miami Beach	FL
Prime Lending Inc	Sturgeon Bay	WI
Prime Mortgage Financial Inc	Wellesley	MA
Prime Point Mortgage Inc	Bellevue	WA
PrimeSource Financial LLC	Hollywood	FL
Professional Investment and FINL Group	Monterey Park	CA
Progressive Bank NA	Lexington	KY
Progressive Financial Inc	Southfield	MI
Providence Financial Corp Inc	Austin	TX
Provident Bank FSB	Saint Joseph	MO
Prudential Home Mortgage Co	Lagrange	IL
Pulaski Bank and Trust Company	Little Rock	AR
Quality Financing Corp	Chicago	IL
Quality Lending Services Inc	San Pablo	CA
Quality Mortgage Services	Hazelwood	MO
Quantum Mortgage Funding Inc	Cincinnati	OH
R F Mortgage Inc	San Diego	CA
Ravenna Savings and Loan Co	Ravenna	OH
Real Estate Lenders Inc	Santa Clarita	CA
Realco Funding Group LC	Annandale	VA
Red Valley Mortgage Inc	Mesa	AZ
Referral Finance.com Corporation	Austin	TX
Reliable Mortgage and Trust Inc	Hollywood	FL
Renaissance Mortgage	Southfield	MI
Republic Trust and Mortgage Inc	Largo	FL
Resource Bancshares Mortgage Group Inc	Columbia	SC
Resource One Federal Credit Union	Dallas	TX
Richland Group	Los Angeles	CA
Richmond Savings Bank SSB	Charlotte	NC
Ritz Financial Inc	Bensalem	PA
RMB Investment Inc	Marina Del Rey	CA
Rocky Mountain Mortgage LTD	Albuquerque	NM
Rose Hill State Bank	Rose Hill	KS
Royal Credit Industries Inc	Glendale	CA
Royal Mortgage Bankers Inc	Great Neck	NY
Ryans Express Equities Corp	East Meadow	NY
Saint Clair Mortgage Corp	Royal Oak	MI
San Jose Mortgage and Investments Corp	Jacksonville	FL
Sanmar Financial Group Inc	Long Beach	CA
Santiam Mortgage Corporation	Lebanon	OR
Saromar Enterprises Inc	Glendale	CA
SAS Financial Corporation	Santa Barbara	CA
SCE Federal Credit Union	Irwindale	CA
Schmitt Mortgage Co	Colorado Springs	CO
Sea Island Bank	Statesboro	GA
Seagull Financial Corp	Hialeah	FL
Security Bank	Madison	SD
Security Bank and Trust Co	Albany	GA
Security Bank Bibb County	Warner Robins	GA
Security Bank Southwest Missouri	Cassville	MO
Security First Bank	Cozad	NE
Security Mortgage of Louisiana Inc	Baton Rouge	LA
Select Mortgage Group Inc	Hialeah	FL
Select Mortgage LLC	East Meadow	NY
SFA Capital Ventures Inc	Northridge	CA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Shamrock Financial Corporation	East Providence	RI
Sheila Enterprises Inc	Monmoth Junction	NJ
Sierra Capital Funding LLC	Irvine	CA
Sierra Financial Inc	Rancho Cucamonga	CA
Smith-Haven Mortgage Corporation	Melville	NY
SNL Mortgage Inc	North Miami Beach	FL
SOBE Mortgage Corp	Delray Beach	FL
Sound Federal Savings & Loan	Mamaroneck	NY
South Atlantic Mortgage Services Inc	Orlando	FL
Southeast Mortgage Bankers	South Gate	CA
Southern Commerical Bank	St Louis	MO
Southern Security Bank Hollywood	Hollywood	FL
Southern United Mortgage	Oneonta	AL
Southland Lending Services	Huntington Beach	CA
Southland Mortgage Investment Group Inc	Gainesville	FL
Sovereign Mortgage Corporation	Sarasota	FL
Spectrum Mortgage Company LLC	Mokena	IL
Spectrum Mortgage Group Inc	Wayne	MI
Standard Mortgage Corporation	Rio Piedras	PR
Starbanc Corporation	San Diego	CA
State Bank and Trust of Seguin	Seguin	TX
State Bank Lucan	Lucan	MN
State Department Federal Credit Union	Alexandria	VA
State Department Federal Credit Union	Alexandria	VA
State National Bank Caddo Mill	Caddo Mills	TX
Stellar Mortgage LLC	Houston	TX
Sterling Bank	Montgomery	AL
Sterling Group LLC	Ridgefield	CT
Sterling Home Funding	Conyers	GA
Sterling International Corp	Chicago	IL
Sterling National Mortgage Corporation	Richmond	VA
Sturgis Federal Savings Bank	Sturgis	MI
Summit Financial Corp	Irvine	CA
Summit Mortgage Corp	Irvine	CA
Sun Security Bank of America	St Peters	MO
Sunpointe Mortgage Corporation	Hollywood	FL
Sunshine Mortgage Services	Jacksonville	FL
Suntrust Bank Chattanooga NA	Chattanooga	TN
Suntrust Bank South Florida NA	Sunrise	FL
Suntrust Bank Tampa Bay	Tampa	FL
Superior Mortgage Co Inc	Mesa	AZ
Telebank	Arlington	VA
Terre Haute First National Bank	Terre Haute	IN
The Mortgage Bank Inc	Miami	FL
The Quincy State Bank	Quincy	FL
The Loan Company Inc	Salt Lake City	UT
Thomaston Federal Savings Bank	Thomaston	GA
TLC Home Finance Inc Placentia	Placentia.	
Town and Country Mortgage LP	Woodland Hills	CA
Towne and Country Mortgage LLC	Midvale	UT
Traditional Mortgage Corp	Richmond Hill	NY
Trans Financial Group Inc	Cerritosa	CA
TSM Mortgage Servicing Corp	Colorado Springs	CO
Tuscaloosa Teachers Credit Union	Tuscaloosa	AL
U S Mortgage and Acceptance Corp	Tustin	CA
UCB Financial Corporation	Downey	CA
Union Bank Company	Columbus Grove	OH
Union Discount Mortgage Inc	Redondo Beach	CA
Union Funding USA Inc	Lake Forest	CA
Union Mortgage Services Inc	Troy	MI
Union National Bank of Westminster	Westminster	MD
Union Street Mortgage Inc	Modesto	CA
United Banc Financial Services Inc	Canton	OH
United Companies Funding Inc	Baton Rouge	LA
United Companies Lending Corp	Baton Rouge	LA
United Fidelity Bank FSB	Evansville	IN
United Home Savings LLC	Westminster	MD
United National Bank	Charleston	WV
Universal Lending Corp	Sacramento	CA
US Financial Ltd	Chicago	IL
USA Mortgage Corporation	Hudson	OH

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
V Loan You Services Corp	Saint Paul	MN
Valentine Mortgage Corp	Diamond Bar	CA
Valley of Rogue Bank	Phoenix	OR
Value Financial Inc	Scotts Valley	CA
Vanguard Bank and Trust Company	Fort Walton Beach	FL
Vanguard Lending Group Inc	Atascadero	CA
Vantage Mortgage Service Center Inc	Sanford	FL
Venture West Funding Inc	El Segundo	CA
Veterans Choice Mortgage Inc	Martinez	GA
VHb Mortgage Company LLC	Fredericksburg	VA
Vista Mortgage Corp	Carmichael	CA
Walhalla State Bank	Walhalla	ND
Wall Street Capital Funding Inc	Conyers	GA
Wall Street Mortgage Corporation	Dallas	TX
Wall Street Residential Loans	Downey	CA
WEBTD.com	Woodlands Hills	CA
Welcome Home Mortgage Inc	Colorado Springs	CO
West Coast Guaranty Bank NA	Sarasota	FL
Western Home Lending Corporation	Montebello	CA
Western Mortgage Express	El Centro	CA
Western Nebraska National Bank	North Platte	NE
Whitley Mortgage Associates	Monroe	NC
Wood Products Credit Union	Springfield	OR
Woodforest National Bank	Conroe	TX
World Residential Mortgage Corp	Deerfield Beach	FL
World Wide Mortgage Corporation	Skokie	IL
Yosemite Brokerage Inc	Bridge City	TX
Zaring Financial Services LLC	Cincinnati	OH

Dated: February 19, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 02–5001 Filed 3–1–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP2–0104]

Meeting Notice of the Eastern Washington Advisory Council; March 21 2002, in Spokane, Washington

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: The Eastern Washington Resource Advisory Council (EWRAC) is scheduled to meet on March 21, 2002, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275. The meeting will convene at 9 a.m. and adjourn upon conclusion of business, but no later than 4 p.m. Public comments will be heard from 10 a.m. until 10:30 a.m. To accommodate all wishing to make public comments, a time limit may be placed on each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: RAC membership update, District Work Accomplishments for FY2001 and Work Program for FY2002, National Fire Plan Update, and future RAC meeting dates. A 15-minute round table discussion will be provided for general issues.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: February 11, 2002.

Joseph K. Buesing,

District Manager.

[FR Doc. 02–5048 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–PB–252Z]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on March 20, 2002 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include an update on current public land issues and an update on Colorado wilderness proposals.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Wednesday, March 20, 2002 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center Office, 3170 East Main Street, Canon City, Colorado 81212.

CONTACT: For further information contact Ken Smith at (719) 269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 15, 2002.

John L. Carochi,

Acting Royal Gorge Field Manager.

[FR Doc. 02–5049 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Tuesday, March 19, 2002, from 8:30 a.m. to 5:00 p.m. local time, and on Wednesday, March 20, 2002, from 8:30 a.m. to 5:00 p.m. local time.

Submit written comments pertaining to the Advisory Board meeting no later than close of business March 8, 2002.

ADDRESSES: The Advisory Board will meet at the Silver Legacy Hotel and Casino, 407 North Virginia Street, Reno, Nevada 89520.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Nordin at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Tuesday, March 19, 2002 (8:30–5:00)

Welcome—Elena Daly
Director, Bureau of Land Management
Introduction of New Board Members & Staff—Elena Daly
Group Manager Comments—John Fend
—Washington Staff Organization
—Charter & Nominations Update

Old Business (9:00–11:30)

BLM Action on May 2001 Recommendations—John Fend
Approval of May 2001 Board Minutes—Robin Lohnes
Trinidad Letter—Outcome—Sharon Kipping
WH&B Crisis Mgt. Strategy—Tom Pogacnik
WH&B National Reward Program—Tom Pogacnik
Wyoming Wild Horse Pilot Project—Don Glenn
Slaughter/Compliance/FOIA Issue —John Fend

Working Lunch (11:30 to 1:00)

WH&B Research Update—Linda Coates-Markle
—Fertility control
—URID/Strangles
—Genetics
—Census Modeling
—Habitat Assessments

Public Comment (4:00 PM)—Robin Lohnes

Adjourn

Wednesday, March 20, 2002 (8:30–5:00)

Strategic Plan: Progress Report—John Fend
—Budget Initiative Progress—John Fend
—Gather and Selective Removal IM—Tom Pogacnik
—Adoption Process Standardization—Janet Nordin
—Drought Projections—Tom Pogacnik

Working Lunch (11:30–1:00)

New Business

WH&B Foundation Update—Janet Nordin
BLM National Foundation—Elena Daly
WH&B Marketing Strategy/Report—Janet Greenlee
Corporate Identity
—National Themes/Slogans
—Olympics Venues—Successes
—Adoption Incentives
—Super Adoption Proposal
Close Out/Recommendations—Robin Lohnes
Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations (41 CFR 102–3.150) require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on March 19, 2002, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon on March 19, 2002, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: February 25, 2002.

Henri R. Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 02–5029 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–736 and 737 (Review)]

Large Newspaper Printing Presses From Germany and Japan

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in August 2001 to determine whether revocation of the antidumping duty orders on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany and Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On February 25, 2002, the Department of Commerce published notice that it was revoking the orders effective September 4, 2001 because ''the only domestic interested party withdrew its interest in both proceedings'' (67 FR 8523). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–205–3160), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server, *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By Order of the Commission.

Issued: February 26, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–5072 Filed 3–1–02; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 21–22, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Westward Look, 245 East Ina Road, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5030 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open hearing.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure has proposed amendments to Rule 1005 of the Federal Rules of Bankruptcy Procedure and to Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19. A public hearing on the amendments is scheduled to be held in Washington, DC, on April 12, 2002.

The Judicial Conference Committee on Rules of Practice and Procedure submits the rule and forms for public comment. All comments and suggestions with respect to the amendments must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than April 22, 2002. Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments on the proposed rule amendments and form revisions can be sent by one of the following three ways: by overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002; by electronic mail via the Internet at *http://www.uscourts.gov/rules;* or by facsimile to Peter G. McCabe at (202) 502–1755.

Notice of Open Hearing

In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules* on the Internet.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20002, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5031 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be

open to public observation but not participation.

DATES: April 22–23, 2002.

TIME: 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5032 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 19, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5033 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 6–7, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Park Hyatt San Francisco, 333 Battery Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION:

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5034 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 25–26, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5035 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 10–11, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5036 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act, Toxic Substances Control Act, and Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on February 1, 2002, a proposed Consent Decree in *United States* v. *Transcontinental Gas Pipe Line Corp.,* Civil Action No. H–02–0387 was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought injunctive relief and civil penalties related to the natural gas pipeline owned and operated by Transcontinental Gas Pipe Line Corp. (Transco) which stretches from Texas to New York. In the Complaint, the United States seeks injunctive relief and civil penalties pursuant to Resource Conservation and Recovery Act (RCRA) section 3008(a), (g), and (h), 42 U.S.C. 6928(a), (g), and (h); Clean Water Act (CWA) Section 301(a), 33 U.S.C. 1311(a); and Toxic Substances Control Act (TSCA) sections 6 and 17, 15 U.S.C. 2605 and 2616. The United States resolves these claims in the proposed Consent Decree which also requires Transco to perform corrective action consisting of solid and groundwater cleanup of hazardous wastes along its pipeline; perform PCB cleanup work; complete a stormwater discharge monitoring program; and pay a civil penalty of $1.4 million.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department

of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Transcontinental Gas Pipe Line Corp.,* No. H–02–0387 (S.D. Tex.), D.J. Ref. 90–71–909.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis, Suite 1500, Houston TX 77002, and at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington DC 20004. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a full copy with all exhibits, please enclose a check in the amount of $85.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. When requesting a copy without exhibits, please enclose a check in the amount of $16.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–5082 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–5). Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the Service to determine participants in the Pilot Immigration program provided for by section 610 of the Appropriations Act. The Service will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4994 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: 60-Day Notice of information collection under review; Application for transfer of petition for naturalization, Form N–455.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a previously approved collection.*

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–455. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used by an applicant to request transfer to another court the petition for naturalization in accordance with section 405 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4995 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; Application to payoff or discharge alien crewman; I–408

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 5, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Application to Payoff or Discharge Alien Crewman.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–408. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge and any alien crewman in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85,000 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,360 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4996 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; supplementary statement for graduate medical trainees; Form I–644.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the

public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Supplementary Statement for Graduate Medical Trainees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–644. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4997 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Refugee/Asylee Relative Petition; Form I–730.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 2, 2002 at 67 FR 122, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–730, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms

Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4989 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act; Form I–693.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 16, 2001 at 66 FR 43031, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–693, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by the INS in considering eligibility for adjustment of status under section 209, 210, 245 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 90 minutes (1.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4990 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request.

ACTION: 30-Day notice of information collection under review: Immigration user fee.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 27, 2001 at 66 FR 59261, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Immigration User Fee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–1). Office of Finance, Immigration and Naturalization.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information requested from commercial air carriers, commercial vessel operators, and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of User Fee collections.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 325 responses at 15 minutes (.25) per response for reporting, in addition to 25 respondents at 10 hours per response for record keeping.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 331 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4991 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Document verification request and document verification request supplement, Forms G–845 and G–845 Supplement.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on August 16, 2001 at 66 FR 43027, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Document Verfication Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–845 and G–845 Supplement, SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. This form is used to check other agency records on applications or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applicants for adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 41,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms

Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4992 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 11, 2001 at 66 FR 51819, in an interim rule, INS No. 2106–00, RIN 1115–AG01. The preamble of the interim rule allowed for emergency OMB approval, as well as a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–25); Business and Trade Services Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected via the submitted supplemental documentation (as contained in 8 CFR 204.13(d)) will be used by the INS to determine eligibility for the requested classification as fourth preference employment-based immigrant broadcasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4993 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement Document: Basic Guide to Jail Administration

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the development of a document that provides jail administrators a guide to the basics of assessing, directing, and improving their jail operations.

Background: There are over 3,000 jails in the United States, and the administrators of these facilities have widely varying backgrounds, experience, and expertise. Often, jail administrators come to their position with some background in general management techniques, but with minimal knowledge and skills in assessing, directing, and overseeing functions specific to jails. Many jail administrators have access to little or no training, since jail funding is frequently severely limited and the training budget is reduced to support other basic functions. As a result of this lack of experience and information, many jail

administrators cannot ensure their jails comply with legal mandates, their operations reflect effective and professional practices, or their scarce resources are efficiently used. In fact, without essential information on jail administration, many of those who oversee the nation's jails cannot even ensure their jails are safe and secure, and this puts staff, inmates, and the community at risk—and places the local government at high risk for liability.

The National Institute of Corrections offers training on jail administration, but is able to reach only a minority of the nation's jail administrators in this way. NIC also makes available a variety of documents on administration-related issues and refers jail administrators to other sources of information and services where appropriate. There is, however, no one document that can serve as a concise and practical guide to jail administration. Such a document will help fill a widespread information void among the nation's jail administrators.

Project Objectives: The National Institute of Corrections wishes to produce a basic guide to jail administration that can be widely disseminated to the nation's jails.

Scope of Work

Document Length: Approximately 150 pages in the body of the document, plus appendices

Document Audience: Administrators of jails of all sizes and all geographic locations, especially those administrators who are new to their positions or those who have been in their position for some time without benefit of training.

Use of Document: The document will be a practical guide to the assessment, direction, and oversight of local jails.

Document Distribution: NIC expects to distribute the document widely. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, jail administrators and other practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request and receive this document.

Document Content: The document will be a basic guide to jail administration. It must be concise, clear, and easily read and referenced. It must be of practical use to the jail administrator and provide information and assessment tools that will allow the administrator to evaluate and improve his/her jail operations. It is not intended to provide exhaustive information on each content topic; instead, it should provide a brief narrative on each topic with related assessment instruments and reference to other reading and resources for further information. The following is an outline of the content topics, at a minimum, to be included. This is not intended to dictate the organization of the manual, but to give applicants an idea of expected subject matter. NIC acknowledges that content and organization will evolve during document development, and applicants are encouraged to present their ideas about organization and content in their proposals.

For the purpose of this Request for Proposal, content topics are divided into three broad areas: (1) Introductory or general topics, (2) tools the jail administrator will apply in all areas of jail operations, and (3) specific jail functions.

Introductory Topics

The Role of the Jail in the Criminal Justice System

Inmates—a discussion of the legal status of jail inmates (pre-trial and sentenced, detention for various criminal justice agencies), the diversity of the population (gender, age, needs and risks among the inmate population), and the challenges this diversity presents to jail management.

The role of the jail administrator—an overview of the administrator's role in the jail and his/her role in areas that are external to, but affect, the jail.

Administrative liability and the basics of risk reduction.

First thirty days on the job: questions to ask and where to get the answers.

Planning, setting priorities, and making improvements.

For each introductory or general topic, the document should also include references to additional reading and resources.

Fundamental Tools in Jail Administration (tools applied to any jail function)

Jail standards—how standards are used in jail management; sources of standards.

Policies and procedures—how policies and procedures are used in jail management; developing, reviewing, and updating policies and procedures.

Resources—budget management strategies, non-fiscal resources available to jails.

Staffing—determining needs; justifying and presenting the staffing request.

Staff training—components of an effective staff training plan; training resources.

Assessments and audits, both internal and external—assessments and audits essential to jail management; how to use assessment and audit information to make improvements.

Documentation—the criticality, purposes, and uses of documentation in the jail.

For each of the ''fundamental tools'' topics, the document should also include strategies and instruments for assessing operations and references to additional reading and resources.

Jail Functions

For each of the following areas, the discussion should include: (1) Related legal requirements and standards, (2) effective practices, (3) strategies and tools for assessing operations, (4) strategies for improving operations (issues to consider, developing an action plan, resources needed), (5) strategies for measuring improvements, and (6) references to additional reading and resources.

Personnel management
Security
Emergency preparedness
Physical plant: safety, sanitation, and maintenance
Intake and release
Inmate supervision and behavior management, including classification
Inmate services
Inmate programs

Project Description: The awardee will produce a completed document that has received an initial edit from a professional editor. NIC will be responsible for the final editing process and document design, but the awardee will remain available during this time for questions and discussion. No travel will be required during the final edit.

Project Schedule: The list below shows the major activities required to complete the project. Document development will begin upon award of this agreement and must be completed twelve months after the award date. The schedule for completion of activities should include the following, at a minimum.

Meet with NIC staff for a project overview and initial planning for content
Review materials provided by NIC (awardee)
Complete initial outline of document content and layout (awardee)
Meet with NIC project staff to review, discuss, and agree on content outline
Research content topics and related resources (awardee)
Develop assessment tools related to content topics (awardee)
Submit draft sections of document to NIC for review (awardee)

Revise draft sections for NIC's approval (awardee)
Submit draft of entire document to NIC for review (awardee)
Revise document for NIC's approval (awardee)
Submit document to editor hired by awardee for first content edit (awardee)
Submit document to NIC in hard copy and on disk in Microsoft Word format (awardee)

Throughout the project period, the awardee should make provisions for meetings with NIC staff—to be held in Longmont, Colorado—at critical planning and review points in document development.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $60,000 (direct and indirect costs) and project activity must be completed within twelve months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this grant application should include, at a minimum:

A brief paragraph that indicates the applicant's understanding of the purpose of the document and the issues to be addressed;

A brief paragraph that summarizes the project goals and objectives;

A clear description of the methodology that will be used to complete the project and achieve its goals;

A statement or chart of measurable project milestones and time lines for the completion of each;

A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;

A description of the qualifications of the applicant organization and each project staff;

A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principals' and associates' relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application.

Deadline for Receipt of Applications: Applications must be received by 4 p.m. Eastern Time on Tuesday, April 16, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call (202) 307–3106 for pickup. Faxed or emailed applications will not be accepted.

ADDRESSES AND FURTHER INFORMATION: A copy of this announcement and the application forms may be obtained through the NIC Web site: *http.//www.nicic.org.* (click on ''Cooperative Agreements''). Requests for a hard copy of this announcement and the application forms should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Alan Richardson at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 143 or 303–682–0382, ext. 143, or by e-mail: *alrichardson@bop.gov.*

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

Indication of a clear understanding of the project requirements;

Background, experience, and expertise of the proposed project staff, including any subcontractors;

Effectiveness of the creative approach to the project;

Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;

Technical soundness of project design and methodology;

Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;

Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; Indication of availability to meet with NIC staff at key points in document development.

Number of Awards: One (1).

NIC Application Number: 02J18. This number should appear in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Executive Order 12372

This project is not subject to the provisions of Executive Order 12372.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: February 27, 2002.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–5076 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, March 4, 2002 & 8:30 a.m. to 12 noon on Tuesday, March 5, 2002.

Place: Portland Marriott Downtown, 1401 S.W. Naito Parkway, Portland, Oregon 97201.

Status: Open.

Matters to be Considered: Presentations on an initiative addressing transition from prison to community, including the Oregon Model and the Multnomah County Data Warehouse Project; election of new officers; division reports on FY 2003 Service Plan and FY 2004 budget recommendations; and update on Interstate Compact activities.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 02–5015 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–36–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in *Charles F. Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board has appellate jurisdiction to review a final agency decision on an adverse action where the actual effective date of the action (here, the date when the employee would no longer be employed by the agency) has been stayed to allow exhaustion of administrative appeals (such as an appeal to the Board) pursuant to a collective bargaining agreement.

SUMMARY:

Background

The appellant in *Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1, received a letter on April 18, 2001, from the manager of the facility where he was employed removing him from his Air Traffic Control Specialist position for misconduct effective April 27, 2001. In the notice of removal, the agency informed the appellant that he could grieve the removal through the negotiated grievance procedure or appeal the matter to the Board. Citing the collective bargaining agreement between the agency and the National Air Traffic Controllers Association, an Association representative requested that the appellant be allowed to exhaust his appeal rights before the removal became effective. The relevant collective bargaining agreement provision states that the agency may allow an employee ''subject to removal or a suspension of more than fourteen (14) days the opportunity to exhaust all appeal rights available under this Agreement before the suspension or removal becomes effective.'' Statutory appeal rights to the Board are available under the agreement. In a May 7, 2001 letter, the deciding official in the appellant's removal approved the Association's request and stayed the appellant's removal. It is undisputed that the appellant remains in a pay and duty status.

Through his representative, the appellant filed an appeal of his removal. After allowing for argument from the parties, the administrative judge dismissed the appeal for lack of jurisdiction, reasoning that the appellant's removal had not been effected. The appellant has filed a petition for review arguing that the Board has jurisdiction over his appeal. The agency has responded in opposition to the petition.

Question To Be Resolved

This appeal raises the question of whether the Board has appellate jurisdiction to review an otherwise appealable action which has been subject to a final agency decision which, however, has been stayed pursuant to the terms of a collective bargaining agreement that allows the employee to exhaust administrative appeals, such as an appeal to the Board, before the adverse action becomes effective.

Issues To Be Considered In Resolving The Question Posed

Title 5 of the United States Code, section 1204(h), states that ''[t]he Board shall not issue advisory opinions,'' and title 5 of the United States Code, section 7513(d) provides that ''an employee against whom an action *is taken* under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.'' (Emphasis supplied.) These statutes raise the question of whether an adverse action ''is taken'' when a final decision is made or when the action actually is effectuated (for example, the date when the employee no longer is employed by the agency), and whether a Board decision on a final, but not yet effectuated, adverse action constitutes a prohibited advisory opinion.

Also relevant to the question raised in this appeal is the decision of the United States Court of Appeals for the District of Columbia Circuit in *National Treasury Employees Union* v. *Federal Labor Relations Authority*, 712 F.2d 669 (D.C. Cir. 1983). While the Board is not bound by decisions of the District of Columbia Circuit Court, the Board can look to such decisions for guidance. In *National Treasury Employees Union,* the court found that the Federal Labor Relations Authority erroneously reasoned in a negotiability decision that the Board lacked jurisdiction over an adverse action where the execution of the adverse action had been delayed under the terms of a collective bargaining agreement. The court concluded that the Customs Bureau was required to negotiate over a collective bargaining agreement provision similar to the one at issue here because the Board had jurisdiction over final, but not yet effected, actions.

Finally, the Board advises interested parties about the practice of the U.S. Postal Service where, pursuant to a collective bargaining agreement, the agency places employees in a non-pay, non-duty status after a removal action, even though the individual remains on the agency's rolls. The Board has considered this practice of placing employees in a non-pay, non-duty status, while still on the agency's rolls, and has held that it may exercise jurisdiction over such adverse actions by the Postal Service. *See Benjamin* v. *U.S. Postal Service*, 29 M.S.P.R. 555, 556–57 (1986); *see also Anderson* v. *U.S. Postal Service*, 67 M.S.P.R. 455, 457 (1995). Whether there is a distinction between allowing an employee to exhaust administrative appeals before the adverse action actually is effectuated and the practice of the U.S. Postal Service is one of the issues the Board will consider in addressing the question posed above.

DATE: All briefs in response to this notice shall be filed with the Clerk of the Board on or before March 22, 2002.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M St., NW., Washington, DC 20419. Because of possible mail delays caused by the closure of the Brentwood Mail facility, respondents are encouraged to file by facsimile transmittal at (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, at (202) 653–7200.

Dated: February 26, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02–4974 Filed 3–1–02; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy (NIFL).

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Institute for Literacy Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 14, 2002 from 9:30 a.m. to 4:30 p.m. and March 15, 2002 from 9:30 a.m. to 1 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Telephone number (202) 233–2027, e-mail: *scoles@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is established under the Workforce Investment Act of 1998, Title II of Pub. L. 105–220, Sec. 242, the National Institute for Literacy. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Advisory Board 's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Advisory Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Advisory Board on the award of fellowships. The National Institute for Literacy Advisory Board meeting on March 14–15, 2002, will focus on future and current NIFL program activities, and other relevant literacy activities and issues. Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: February 26, 2002.

Sandra L. Baxter,

Interim Executive Director.

[FR Doc. 02–4961 Filed 3–1–02; 8:45 am]

BILLING CODE 6055–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Website: *www.nsf.gov/home/pubinfo/advisory.htm.* This information may also be requested by telephoning 703/292–8182.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–5061 Filed 3–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services; Notice of Intent To Prepare an Environmental Assessment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent to Prepare an Environmental Assessment for Amendment of Special Nuclear Material License SNM–124 for Nuclear Fuel Services, Inc., Erwin, Tennessee.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 to authorize new activities at the Nuclear Fuel Services, Inc. (NFS), facility located in Erwin, TN, and will prepare an Environmental Assessment to determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact.

Identification of the Proposed Action

NFS plans to request three amendments to their NRC license to authorize activities associated with the preparation of blended low-enriched uranium (BLEU) from surplus highly-enriched uranium from the U.S. Department of Energy. These activities would be performed under a contract with Tennessee Valley Authority (TVA) to provide low-enriched uranium fuel to be used in TVA's Brown's Ferry Nuclear Plant in Alabama. The Department of Energy prepared an Environmental Impact Statement to address the disposition of surplus highly enriched uranium (Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, DOE/EIS–0240, June 1996). NRC determined that this EIS did not specifically address the local environmental impacts of the construction of new storage and processing facilities in Erwin, Tennessee, and operation of these facilities, and that additional environmental review is necessary to support NRC's licensing actions.

In an amendment application to be submitted in February 2002, NFS will request authorization to store low-enriched uranyl nitrate solution in a new tank storage facility on the NFS plant site. In an amendment application to be submitted in July 2002, NFS will request authorization to perform dissolution of highly-enriched uranium/aluminum alloy and uranium metal and downblending of the resulting solution into low-enriched uranyl nitrate solution. In an amendment application

to be submitted in January 2003, NFS will request authorization to perform conversion of the low-enriched uranyl nitrate solution into uranium dioxide powder. NRC is preparing one Environmental Assessment that will address the environmental affects of all 3 future license amendments.

NFS submitted a licensing plan of action to the NRC in an attachment to a letter dated October 4, 2001, from B. Marie Moore, NFS, to the Director, Office of Nuclear Material Safety and Safeguards (NRC ADAMS Accession Number ML012850006). NRC acknowledged the licensing plan of action, with comment, in a letter dated December 31, 2001 (NRC ADAMS Accession Number ML020020117). NFS also submitted a Supplemental Environmental Report for Licensing Actions to Support the BLEU Project, dated November 9, 2001, (NRC ADAMS Accession Number ML013330459), and Additional Information to Support an Environmental Review for BLEU Project, dated January 15, 2002 (NRC ADAMS Accession Number ML020290471).

The Commission intends to prepare an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission will either conclude that an Environmental Impact Statement is necessary or will conclude that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' a copies of the relevant documents are available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

The NRC contact for this licensing action is Mary T. Adams. Ms. Adams may be contacted at (301) 415–7249 or by e-mail at *mta@nrc.gov* for more information about the licensing action.

Dated at Rockville, Maryland, this 25 day of February 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–5047 Filed 3–1–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) License Nos. (as shown in Attachment 1) EA–02–026]

All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

I

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and 10 CFR part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the generalized high-level threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures should be required to be implemented by licensees as prudent, interim measures, to address the generalized high-level threat environment in a consistent manner throughout the nuclear reactor community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 [1] of this Order, on all operating power reactor licensees. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current generalized high-level threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to specifically accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although the licensees' responses to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the responses must be supplemented because the generalized high-level threat environment has persisted longer than expected, and as a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current, generalized high-level threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, it is hereby ordered effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:

[1] Attachment 2 contains safeguards information and will not be released to the public.

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation no later than August 31, 2002.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission, when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 50.54(p), all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific plant, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 25th day of February 2002.
For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Region I Operating Power Plants—Senior Executive Contacts

Robert F. Saunders
President and Chief Nuclear Officer
Beaver Valley Power Station, Units 1 & 2
Docket Nos. 50–334 & 50–412
License Nos. DPR–66 & NPF–73
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Charles Cruse
Vice President—Nuclear Energy
Calvert Cliffs Nuclear Power Plant Units 1 & 2
Docket Nos. 50–317 & 50–318
License Nos. DPR–53 & DPR–69
Constellation Energy Group, Inc.
1650 Calvert Cliffs Pkwy
Office 2–OTF
Lusby, MD 20657

Harold W. Keiser
Chief Nuclear Officer & President
Hope Creek Generating Station
Docket No. 50–354
License No. NPF–57
PSEG Nuclear LLC—N09
Foot of Buttonwood Ave
Hancocks Bridge, NJ 08038

Michael Kansler
Senior Vice President and Chief Operating Officer
Indian Point Nuclear Generating Station, Unit Nos. 2 & 3
Docket Nos. 50–247 & 50–286

License Nos. DPR–26 & DPR–64
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
Michael Kansler
Senior Vice President and Chief Operating Officer
James A. Fitzpatrick Nuclear Power Plant
Docket No. 50–333
License No. DPR–59
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Limerick Generating Station, Units 1 & 2
Docket Nos. 50–352 & 50–353
License Nos. NPF–39 & NPF–85
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

David Christian
Senior Vice President—Nuclear Operations and Chief Nuclear Officer
Millstone Nuclear Power Station, Unit Nos. 2 & 3
License Nos. DPR–65 & NPF–49
Docket Nos. 50–336 & 50–423
Dominion Nuclear Energy
Innsbrook Technical Center—2SW
5000 Dominion Boulevard
Glenn Allen, VA 23060

Raymond Wenderlich
Senior Constellation Nuclear Officer
Nine Mile Point Nuclear Station, Unit Nos. 1 & 2
Docket Nos. 50–220 & 50–410
License Nos. DPR–63 & NPF–69
1997 Annapolis Exchange Parkway
Annapolis, MD 21401

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Oyster Creek Nuclear Generating Station
Docket No. 50–219
License No. DPR–16
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Peach Bottom Atomic Power Station, Units 2 & 3
Docket Nos. 50–277 & 50–278
License Nos. DPR–44 & DPR–56
Exelon Generation Company
4300 Winfield Road
Warrenville, IL 60555

Michael Kansler
Senior Vice President and Chief Operating Officer
Pilgrim Nuclear Power Station Unit No. 1
Docket No. 50–293
License No. DPR–35
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Paul C. Wilkens
Sr. Vice President Energy Operations
R. E. Ginna Nuclear Power Plant
Docket No. 50–244
License No. DPR–18
Rochester Gas & Electric Corporation
89 East Avenue
Rochester, NY 14649

Harold W. Keiser
Chief Nuclear Officer & President
Salem Nuclear Generating Station, Units 1 & 2
Docket Nos. 50–272 & 50–311
License Nos. DPR–70 & DPR–75
PSEG Nuclear LLC–N09
Foot of Buttonwood Ave
Hancocks Bridge, NJ 08038

Ted C. Feigenbaum
Executive Vice President & Chief Nuclear Officer
Seabrook, Unit 1
Docket No. 50–443
License No. NPF–86
North Atlantic Energy Service Corp.
c/o Mr. James M. Peschel
Rt. 1 Lafayette Rd
Seabrook, NH 03874

Robert G. Byram
Senior Vice President & Chief Nuclear Officer
Susquehanna Steam Electric Station, Units 1 & 2
Docket Nos. 50–387 & 50–388
License Nos. NPF–14 & NPF–22
PPL Susquehanna, LLC
2 North Ninth Street
Allentown, PA 18101

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Three Mile Island Nuclear Station, Unit 1
Docket No. 50–289
License No. DPR–50
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Ross P. Barkhurst
President and Chief Executive Officer
Vermont Yankee Nuclear Power Station
Docket No. 50–271
License No. DPR–28
Vermont Yankee Nuclear Power Corporation
185 Old Ferry Road
Brattleboro, VT 05302–7002

Region II Operating Power Plants—Senior Executive Contacts

John A. Scalice
Chief Nuclear Officer and Executive Vice President
Browns Ferry Nuclear Plant, Units 1, 2 & 3
Docket Nos. 50–259, 50–260 & 50–296
License Nos. DPR–33, DPR–52 & DPR–68
Tennessee Valley Authority
6A Lookout Place 1101 Market Street
Chattanooga, TN 37402–2801

C. S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Brunswick Steam Electric Plant Units 1 & 2
Docket Nos. 50–325 & 50–324
License Nos. DPR–71 & DPR–62
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

Michael S. Tuckman
Executive Vice President Nuclear Generation
Catawba Nuclear Station, Units 1 & 2
Docket Nos. 50–413 & 50–414
License Nos. NPF–52 & NPF–62
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

C.S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Crystal River Unit 3 Nuclear Generating Plant
Docket No. 50–302
License No. DPR–72
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

W.G. Hairston, III
President and Chief Executive Officer
Edwin I. Hatch Nuclear Plant Units 1 & 2
Docket Nos: 50–321 & 50–366
License Nos. DPR–57 & NPF–5
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

C. S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
H.B. Robinson Steam Electric Plant, Unit No. 2
Docket No. 50–261
License No. DPR–23
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

W.G. Hairston, III
President and Chief Executive Officer
Joseph M. Farley Nuclear Plant, Units 1 & 2
Docket Nos. 50–348 & 50–364
License Nos. NPF–2 & NPF–8
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

David Christian
Sr. Vice President Nuclear and Chief Nuclear Officer
North Anna Power Station, Units 1 & 2
Docket Nos. 50–338 & 50–339
License Nos. NPF–4 & NPF–7
Virginia Electric & Power Company
5000 Dominion Blvd.
Glen Allen, VA 23060–6711

Michael S. Tuckman
Executive Vice President Nuclear Generation
Oconee Nuclear Station, Units 1, 2 & 3
Docket Nos. 50–269, 50–270 & 50–287
License Nos. DPR–38, DPR–47 & DPR–55
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

John A. Scalice
Chief Nuclear Officer and Executive Vice President
Sequoyah Nuclear Plant, Units 1 & 2
Docket Nos. 50–327 & 50–328
License Nos. DPR–77 & DPR–79
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402–2801

C.S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Shearon Harris Nuclear Power Plant, Unit 1
Docket No. 50–400
License No. NPF–63
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

J. A. Stall
Senior VP—Nuclear and Chief Nuclear Officer
St. Lucie Plant Units 1 & 2

Docket Nos. 50–335 & 50–389
License Nos. DPR–67 & NPF–16
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408–0420

David Christian
Sr. Vice President Nuclear and Chief Nuclear Officer
Surry Power Station, Unit 1 & 2
Docket Nos. 50–280 & 50–281
License Nos. DPR–32 & DPR–37
Virginia Electric & Power Company
5000 Dominion Blvd.
Glen Allen, VA 23060–7611

J. A. Stall
Senior VP—Nuclear and Chief Nuclear Officer
Turkey Point Units 3 & 4
Docket Nos. 50–250 & 50–251
License Nos. DPR–31 & DPR–41
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408–0420

Steve Byrne
Senior Vice President—Nuclear Operations
Virgil C. Summer Nuclear Station, Unit 1
Docket No. 50–395
License No. NPF–12
South Carolina Electric & Gas Company
Braham Blvd. at Hwy 215
Jenkinsville, SC 29065

W.G. Hairston, III
President and Chief Executive Officer
Vogtle Electric Generating Plant, Units 1 & 2
Docket Nos. 50–424 & 50–425
License Nos. NPF–68 & NPF–81
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

John A. Scalice
Chief Nuclear Officer & Executive Vice President
Watts Bar Nuclear Plant, Unit 1
Docket No. 50–390
License No. NPF–90
TVA, 6A Lookout Place
1101 Market Street
Chattanooga, TN 37402–2801

Michael S. Tuckman
Executive Vice President Nuclear Generation
William B. McGuire Nuclear Station Units 1 & 2
Docket Nos. 50–369 & 50–370
License Nos. NPF–9 & NPF–17
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

Region III Operating Power Plants—Senior Executive Contacts

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Byron Station, Units 1 & 2/Braidwood Station, Units 1 & 2
Docket Nos. 50–454 & 50–455 (Byron), 50–456 & 50–457 (Braidwood)
License Nos. NPF–37 & NPF–66 (Byron), NPF–72 & NPF–77 (Braidwood)
Exelon Generation Company, LLC 4300 Winfield Road
Warrenville, IL 60555

Oliver D. Kingsley, Jr.
Chief Nuclear Officer
Clinton Power Station, Unit 1
Docket No. 50–461
License No. NPF–62
AmerGen Energy Company, LLC
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Robert F. Saunders
President and Chief Nuclear Officer
Davis-Besse Nuclear Power Station, Unit 1
Docket No. 50–346
License No. NPF–3
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

A. Christopher Bakken
Senior Vice President and Chief Nuclear Officer
Donald C. Cook Nuclear Plant, Units 1 & 2
Docket Nos. 50–315 & 50–316
License Nos. DPR–58 & DPR–74
Indiana Michigan Power Company
Nuclear Generation Group
500 Circle Drive
Buchanan, MI 49107

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Dresden Nuclear Power Station, Units 2 & 3
Docket Nos. 50–237 & 50–249
License Nos. DPR–19 & DPR–25
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Michael B. Sellman
President and Chief Executive Officer
Duane Arnold Energy Center
Docket No. 50–331
License No. DPR–49
Nuclear Management Company, LLC
700 First Street
Hudson WI 54016

Douglas R. Gibson
Executive Vice President, Power Generation and Chief Nuclear Officer
Fermi, Unit 2
Docket No. 50–341
License No. NPF–43
Detroit Edison Company
2000 Second Avenue
Detroit, MI 48226

Michael B. Sellman
Chief Executive Officer
Kewaunee Nuclear Power Plant
Docket No. 50–305
License No. DPR–43
Nuclear Management Company, LLC
700 First Street
Hudson WI 54016

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
LaSalle County Station, Units 1 & 2
Docket Nos. 50–373 & 50–374
License Nos. NPF–11 & NPF–18
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Michael B. Sellman
President and CEO
Monticello Nuclear Generating Plant
Docket No. 50–263
License No. DPR–22
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Michael B. Sellman
President and CEO
Palisades Plant
Docket No. 50–255
License No. DPR–20
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Robert F. Saunders
President and Chief Nuclear Officer
Perry Nuclear Power Plant, Unit 1
Docket No. 50–440
License No. NPF–58
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Michael B. Sellman
President and CEO
Point Beach Nuclear Plant, Units 1 & 2
Docket Nos. 50–266 & 50–301
License Nos. DPR–24 & DPR–27
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Michael B. Sellman
President and CEO
Prairie Island Nuclear Generating Plant, Units 1 & 2
Docket Nos. 50–282 & 50–306
License Nos. DPR–42 & DPR–60
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Quad Cities Nuclear Power Station, Units 1 & 2
Docket Nos. 50–254 & 50–265
License Nos. DPR–29 & DPR–30
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Region IV Operating Power Plants—Senior Executive Contacts

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Arkansas Nuclear One—Units 1 & 2
Docket Nos: 50–313 & 50–368
License Nos. DPR–51 & NPF–6
Entergy Operations Inc.
1340 Echelon Parkway
Jackson, MS 39213

G. L. Randolph
Sr. Vice President—Generation and Chief Nuclear Officer
Callaway Plant, Unit 1
Docket No. 50–483
License No. NPF–30
AmerenUE Corporation
Callaway Nuclear Plant
Junction Hwy CC & Hwy O
Portland, MO 65067

J. V. Parrish
Chief Executive Officer
Columbia Generating Station
Docket No. 50–397
License No. NPF–21
Energy Northwest
MD 1023
Snake River Warehouse
North Power Plant Loop
Richland, WA 99352

C. Lance Terry
Senior Vice President and Principal Nuclear Officer
Comanche Peak Steam Electric Station, Units 1 & 2
Docket Nos. 50–445 & 50–446
License Nos. NPF–87 & NPF–89
TXU Management Company LCC
Managing Partner for TXU Generation Company LP
FM 56
5 Miles North of Glen Rose
Glen Rose, Texas 76043

David L. Wilson
Vice President of Nuclear
Cooper Nuclear Station
Docket No. 50–298
License No. DPR–46
Nebraska Public Power District
2 Miles South of Brownsville
Brownsville, NE 68321

Gregory M. Rueger
Senior Vice President Generation and Chief Nuclear Officer
Diablo Canyon Nuclear Power Plant Units 1 & 2
Docket Nos. 50–275 & 50–323
License Nos. DPR–80 & DPR–82
Pacific Gas and Electric Company
77 Beale Street, 32nd Floor
San Francisco, California 94105

W. Gary Gates
Vice President for Nuclear Operations
Fort Calhoun Station, Unit 1
Docket No. 50–285
License No. DPR–40
Omaha Public Power Dist.
444 South 16th Street Mall
Omaha, NE 68102–2247

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Grand Gulf Nuclear Station, Unit 1
Docket No. 50–416
License No. NPF–29
Entergy Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

James M. Levine
Executive Vice President and Chief Operating Officer
Palo Verde Nuclear Generating Station, Units 1, 2 & 3
Docket Nos. 50–528, 50–529 & 50–530
License Nos. NPF–41, NPF–51 & NPF–74
Arizona Public Service Company
400 North 5th Street, MS 9046
Phoenix, AZ 85004

Gary J. Taylor
Senior Vice President and Chief Operating Officer
River Bend Station
Docket No. 50–458
License No. NPF–47
Entergy Operations Inc.
1340 Echelon Parkway
Jackson, MS 39213

Harold B. Ray
Executive Vice President
San Onofre Nuclear Station, Units 2 & 3
Docket Nos. 50–361 & 50–362
License Nos. NPF–10 & NPF–15
Southern California Edison Company
8631 Rush Street
Rosemead, CA 91770

William T. Cottle
President and Chief Executive Officer
South Texas Project, Units 1 & 2
Docket Nos. 50–498 & 50–499
License Nos. NPF–76 & NPF–80
STP Nuclear Operating Company
South Texas Project
Electric Generating Station
8 Miles west of Wadsworth, on FM 521
Wadsworth, TX 77483

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Waterford Steam Electric Generating Station, Unit 3
Docket No. 50–382
License No. NPF–38
Entergy Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

Otto L. Maynard
President and Chief Executive Officer
Wolf Creek Generating Station, Unit 1
Docket No. 50–482
License No. NPF–42
Wolf Creek Nuclear Operating Corporation
1550 Oxon Lane NE.
Burlington, KS 66839

[FR Doc. 02–5046 Filed 3–1–02; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 24, Amending OMB Circular No. A–76, ''Performance of Commercial Activities''

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: This Transmittal Memorandum updates the annual Federal pay raise assumptions and inflation factors used for computing the government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 2003.

DATES: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the government's in-house cost estimate has not been publicly revealed before this date.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Tel. No. (202) 395–6104.

Availability: Copies of the OMB Circular A–76, its Revised Supplemental Handbook and currently applicable Transmittal Memoranda changes may be obtained at the online OMB Homepage address (URL): *http://www.whitehouse.gov/WH/EOP/omb/circulars.*

Mitchell E. Daniels, Jr.,
Director.

February 26, 2002.
Circular No. A–76 (Revised)
Transmittal Memorandum No. 24

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities.

This Transmittal Memorandum updates the annual federal pay raise assumptions and inflation factors used for computing the government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 2003.

The non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the fiscal year 2003 budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

FEDERAL PAY RAISE ASSUMPTIONS

Effective date	Percent	
	Civilian	Military
January:		
2001	3.7	3.7
2002	4.6	[1] 6.9
2003	2.6	4.1
2004	3.4	3.4
2005	3.4	3.4
2006	3.4	3.4
2007	3.4	3.4
2008	3.4	3.4
2009	3.4	3.4
2010	3.4	3.4
2011	3.4	3.4
2012	3.4	3.4

[1] Average of various longevity- and rank-specific increases for January 2002.

NON-PAY CATEGORIES (SUPPLIES AND EQUIPMENT, ETC.)

Fiscal year	Percent
2001	2.3
2002	2.2
2003	1.8
2004	1.7
2005	1.8
2006	1.9
2007	1.9

NON-PAY CATEGORIES (SUPPLIES AND EQUIPMENT, ETC.)—Continued

Fiscal year	Percent
2008	1.9
2009	1.9
2010	1.9
2011	1.9
2012	1.9

The pay rates (including geographic pay differentials) that are in effect for 2002 shall be included for the development of in-house personnel costs. The pay raise factors provided for 2003 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provides the Revised Supplemental Handbook, and is dated March 27, 1996 (Federal Register, April 1, 1996, pages 14338–14346). Transmittal Memoranda No. 16, 17, 18 and 19 (to the extent they provided Circular A–76 federal pay raise and inflation factors) are canceled. Transmittal Memorandum No. 20 provided changes to the Revised Supplemental Handbook to implement the Federal Activities Inventory Reform Act of 1998 (P.L. 105.270). Transmittal Memorandum No. 21 provided A–76 federal pay raise and inflation factor assumptions and is canceled. Transmittal Memorandum No. 22 made technical changes to the Revised Supplemental Handbook regarding the implementation of the FAIR Act, A–76 administrative appeals, and the participation of directly affected employees on A–76 Source Selection Boards and their evaluation teams. Transmittal Memorandum No. 23, which provided last year's Circular A–76 federal pay raise and inflation factor assumptions, is hereby canceled.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–4998 Filed 3–01–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: On January 3, 2002, OMB published Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. Paragraph IV.3 of these Guidelines calls upon each agency to ''prepare a draft report, no later than April 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information disseminated by the agency.'' Paragraph IV.4 calls upon each agency to ''publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment.'' This notice announces an extension of that April 1, 2002, deadline to May 1, 2002. Agencies should now ''prepare a draft report, no later than May 1, 2002,'' providing the material called for in these Guidelines.

DATES: *Effective Date:* March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Brooke J. Dickson, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3785 or by e-mail to *informationquality@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) published proposed guidelines in the **Federal Register** on June 28, 2001 (66 FR 34489). OMB published final guidelines in the **Federal Register** on September 28, 2001 (66 FR 49718), and republished the final guidelines, with amendments, on January 3, 2002 (67 FR 369) and corrections thereto on February 5, 2002 (67 FR 5365).

This extension of the April 1, 2002, deadline to May 1, 2002, provides agencies additional time to develop and prepare their draft guidelines. While some agencies may be ready to release their draft guidelines for public review and comment prior to May 1, 2002, others have requested additional time.

Dated: February 25, 2002.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 02–4999 Filed 3–1–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45471; File No. SR–Amex–2001–56]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change Relating to the Recording of Images, Sounds, or Data on the Trading Floor of the Exchange

February 22, 2002.

On August 1, 2001, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Article II, Section 3 of the Amex Constitution, to control the recording of images, sound, or data on the Trading Floor. On January 15, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 1, 2002.[4] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (January 14, 2002) (''Amendment No. 1''). In Amendment No. 1, the Amex limited its proposed rule language to recording of images, sound or data ''on the Trading Floor'' (rather than ''on the premises of the Exchange'').

[4] *See* Securities Exchange Act Release No. 45333 (January 25, 2002), 67 FR 5015.

[5] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

of the Act.[7] Section 6(b)(5)[8] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will promote just and equitable principles of trade by protecting any rights the Exchange may have with regard to images and sounds emanating from the Trading Floor and by promoting the orderly conduct of business on the Trading Floor.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. Because no comments were received and because the proposed rule change will promote just and equitable principles of trade, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[9] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–Amex–2001–56) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5062 Filed 3–1–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3394]

State of Oklahoma; Amendment # 2

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to April 8, 2002.

The deadline for filing applications for economic injury has also been extended to November 7, 2002. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 26, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–5050 Filed 3–1–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3934]

Culturally Significant Objects Imported for Exhibition Determinations: ''20th Century Avant-Garde Drawings From the State Russian Museum''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''20th Century Avant-Garde Drawings from the State Russian Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Northeast Document Conservation Center, Andover, Massachusetts, from on or about April 8, 2002, to on or about April 30, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: February 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–5098 Filed 3–1–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 14, 2001, pages 57149–57140.

DATES: Comments must be submitted on or before April 3, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certificated Training Centers, Simulator Rule.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0570.

Form(s) AAA Form 8400–8, Operations Specifications.

Affected Public: A total of 75 training center certificate holders.

Abstract: To determine regulatory compliance, there is a need to maintain records of certain training and recency of experience; there is a need for training centers to maintain records of student training, employee qualification and training, and training program approvals. The information is used to determine compliance with airmen certification and testing to ensure safety.

Estimated Annual Burden Hours: An estimated 6,822 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory

[7] 15 U.S.C. 78f(b)(5).

[8] Id.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 27, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–5120 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–14]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 27, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 02–5121 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–13]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 25, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–P2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, including a self-addressed, stamped postcard.

You must also submit comments through the Internet to *http://dma.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dma.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on February 27, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11134.

Petitioner: Lufthansa Technik AG.

Section of 14 CFR Affected: 14 CFR 25.785(j)

Description of Relief Sought: To allow Lufthansa Technik to configure the Boeing Model 737–800 airplane for private, not-for-hire use and be exempted, in the configuration of the interior areas specified as the ''Private Bedroom'' and the ''First Class'' sections, from the requirement for a ''firm handhold along each aisle.''

[FR Doc. 02–5122 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a new working group for the aging Transport Systems Rulemaking Advisory Committee.

SUMMARY: This action gives notice of the formation of a new harmonization working group to assist the Aging Transport Systems Rulemaking Advisory Committee with investigating and developing recommendations to enhance the safety of electrical wiring systems in small transport airplanes.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Manager, Airplane and Flight Crew Interface Branch, ANM–111, Executive Director of ATSRAC, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055; telephone (425) 227–2589 or fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

In response to the White House Commission on Aviation Safety and Security, the Federal Aviation Administration (FAA) formed the Aging Non-Structural Systems Study Team, which developed the FAA's approach to

improving the management of aging wire systems. To assist in fulfilling the actions specified in the Aging Non-Structural Systems Plan, the FAA established an Aging Transport Systems Rulemaking Advisory Committee (ATSRAC) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on airplane system safety issues like aging wire systems. The FAA initially tasked ATSRAC in 1998 with the following five tasks, with the goal of developing recommendations to enhance airplane electrical wiring systems:

1. Collect data on aging wiring systems through airplane inspections.
2. Review airplane manufacturer's service information.
3. Review operators' maintenance programs.
4. Review manufacturers' Standard Practices for Wiring.
5. Review air carrier and repair station training programs.

It is important to note that the results from the initial taskings indicate that problems associated with systems on aging airplanes are not completely related to the degradation over time of wire systems. Inadequate installation and maintenance practices can lead to what is commonly referred to as an ''aging system'' problem. As such, the scope of the ATSRAC is not limited solely to age-related issues but includes improving the continued airworthiness of airplane systems, and, in particular, electrical wire systems.

In 2001, the FAA tasked the ATSRAC with four new tasks to facilitate the implementation of the recommendations, which were primarily based on the review of data related to large transport airplanes, from the initial five tasks. To help develop its reports in response to the new tasks, the ATSRAC established four harmonization working groups.

This notice informs the public of the formation of one additional ATSRAC harmonization working group, the Small Transport Airplane Harmonization Working Group. The ATSRAC has chosen to establish a new harmonization working group to provide technical support in developing its recommendations to the FAA. This group will establish working methods to ensure coordination among the four existing groups and coordination with working groups established by the Aviation Rulemkaing Advisory Committee. This coordination is required to ensure efficient use of resources, continuity in related decisions, and the reduction of duplication of effort.

New Harmonization Working Group and Assigned Tasks

The Small Transport Airplane Harmonization Working Group should be comprised of persons who have expertise in small aircraft (i.e., aircraft with 6–30 passenger seats and a maximum payload capacity of 7,500 pounds or less) design, maintenance, or operations. The group will—

1. Investigate the applicability of previous ATSRAC recommendations to small transport airplane electrical wire systems; and

2. Identify issues unique to these systems and recommend appropriate actions based on results from—

- Performing a sample inspection of in-service and retired small transport airplanes that correlate to the inspection previously performed under the original task 1 and task 2 of the ATSRAC;
- Reviewing fleet-service history to identify trends or areas for actions; and
- Coordinating with other ATSRAC Harmonization Working Groups to ensure that the ATSRAC reports to the FAA consider the needs of small transport airplanes.

The working group will serve as staff to the ATSRAC to assist the Committee in writing technical reports that will allow the FAA to complete its development of associated rulemaking language and advisory material. Working group documents will be reviewed, deliberated, and approved by the ATSRAC. If the ATSRAC accepts the working group's documents, the Committee will forward them to the FAA as ATSRAC recommendations.

In addition to coordinating with other working groups, the Small Transport Airplane Harmonization Working Group should coordinate with various organizations and specialists, as appropriate. And, if the group identifies a need for new working groups, when existing groups do not have the appropriate expertise to address certain tasks, it should inform the Committee.

Working Group Activity

The working group is expected to comply with the procedures adopted by ATSRAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration by the ATSRAC, following the establishment and selection of the working group.

2. Give a detailed conceptual presentation of proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft a report and/or any other collateral documents the working group determines to be appropriate and submit them to the ATSRAC for review and approval by January 2003.

4. Provide a status report at each meeting of the ATSRAC.

Participation in the Working Group

The working group will be composed of experts having an interest in the assigned tasks. Participants in the working group should be prepared to devote a significant portion of their time to the ATSRAC task through January 2003. A working group member need not be a representative or a member of the ATSRAC.

An individual who has expertise in the subject matter and who wishes to become a member of the Small Transport Airplane Harmonization Working Group should contact: Charles Huber (see **FOR FURTHER INFORMATION CONTACT** section of this notice), expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than (30 days following publication of this notice). The ATSRAC Chair, the Executive Director, and the working group Co-Chairs will review the requests, and the individuals will be advised whether or not their requests can be accommodated.

The Secretary of Transportation has determined that the formation and use of ATSRAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ATSRAC will be open to the public. Meetings of the individual working groups will not be open to the public, except to the extent those individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on February 25, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–5115 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss a task concerning ratings for aeronautical repair stations.

DATES: The meeting will be held on March 11–12, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and presentations no later than 3 business days before a meeting.

ADDRESSES: The meetings will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meeting will be held March 11–12, 2002, from 9 a.m. to 5 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818. The committee will discuss ratings for aeronautical repair stations.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification no later than 3 business days before the meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at a meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on February 26, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–5097 Filed 2–27–02; 2:16 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Campbell County, VA and City of Lynchburg

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) in cooperation with the Virginia Department of Transportation (VDOT) for a proposed Route 29 South Bypass Improvement Project in Campbell County and the City of Lynchburg to address safety and capacity issues and to enhance mobility and economic competitiveness.

FOR FURTHER INFORMATION CONTACT: Jerry Combs, Transportation Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone (804) 775–3340 or Jeffrey L. Rodgers, Environmental Specialist II, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia, 23219–2000, Telephone (804) 371–6785.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the VDOT, will prepare an EIS for the proposed Route 29 South Bypass Improvement Project in Campbell County and City of Lynchburg. The proposed project would connect Route 29 south of Lynchburg with Route 460 and the Route 29 Madison Heights Bypass east of Lynchburg with a combination of improvements including the construction of a four-lane divided limited access highway on new location and the improvement of existing facilities. Where alternatives overlap existing Route 460, a six-to-eight lane typical section on Route 460 would be necessary. The length of the proposed improvement ranges from 12.8 miles to 21 miles depending upon the alternative being considered.

Recognizing that the National Environmental Policy Act (NEPA) process requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for study consisting of a no-build alternative as well as five build alternatives with each consisting of improvements to existing roadways and new alignment facilities. Other alternatives, such as mass transit, transportation system management options, access management, upgrade of existing facilities and other alignments to the east and to the west considered and eliminated from consideration as reasonable alternatives. The five build alternatives and the no-build alternative will be forwarded for analysis in the draft EIS based on their ability to address the purpose and need while avoiding known and sensitive resources.

Route 29 is a designated corridor of national and state significance with the South Lynchburg Bypass being recognized as a key element with needed improvements. Location and environmental studies began as far back as 1994. A citizen information meeting was held in January 1994 to solicit input for the studies and again on January 19 and 21, 1999, to discuss the eastern and western alternatives that were developed as a result of the comments received from the first meeting. This proposed project was presented at the regularly scheduled VDOT interagency coordination meeting on February 16, 1999. Partnering meetings were held on May 18 and September 21, 1999. This EIS will build upon the scoping, engineering, and environmental work as well as the public involvement effort conducted to date. Coordination with the appropriate Federal, State, and local agencies, private organizations, citizens, and interest groups who have expressed or are known to have an interest in this proposal will continue.

Notices of public hearing will be given through various forums providing the time and place of the meeting along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are identified and taken into account,

comments and input are invited from all interested parties. Comments and questions concerning the proposed action and draft EIS should be directed to FHWA at the address provided above and should be submitted within 30 days of its publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 USC 315; 49 CFR 1.48

Issued on: February 25, 2002.

Jerry Combs,

Transportation Specialist.

[FR Doc. 02–5005 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Madison, Stanton, Wayne, Dixon, and Dakota Counties, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Madison, Stanton, Wayne, Dixon and Dakota Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5765. Mr. Arthur Yonkey, Planning and Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, will prepare an Environmental Impact Statement (EIS) for a proposal to improve Highway N–35 in northeast Nebraska in Madison, Stanton, Wayne, Dixon and Dakota Counties. The proposed improvements to N–35 will provide a four-lane highway between Norfolk and South Sioux City, Nebraska, for a distance of about 70 miles. Existing N–35 is a two-lane rural highway generally following the county road grid and is not conducive to longer distance through traffic.

Alternatives under consideration include: (1) Taking no action; (2) reconstruction of N–35 on existing alignment; and (3) providing a four-lane highway on new alignment.

An agency scoping meeting and a public scoping/information meeting are planned. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the public scoping/information meeting and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 26, 2002.

Edward Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 02–5086 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pottawattamie County, IA and Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed bridge project between Pottawattamie County, Iowa, and Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5765. Mr. Arthur Yonkey, Planning and Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795. Mr. James Rost, Office of Environmental Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1798.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, and the Iowa Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to construct a bridge over the Missouri River. The proposed project would connect Pottawattamie County, Iowa and Douglas County, Nebraska, in the vicinity of Omaha, Nebraska.

Alternatives under consideration include: (1) Taking no action; (2) rehabilitaiton or replacing the US–275 Bridge on the existing alignment; and (3) providing a new crossing adjacent to the existing alignment.

The South Omaha Veterans Memorial Bridge (Highway US–275 Bridge) has been listed on the National Register of Historic Places. The existing bridge is a multiple span structure approximately 4,380 feet long with a 22.2 foot driving surface. The main bridge section is a 2-span, continuous Warren through truss about 1,050 feet long.

An agency scoping meeting and a public scoping/information meeting are planned. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the public scoping/information meeting and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 26, 2002.

Edward Kosola,

Realty/Environmental Officer, Nebraska Divsion, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 02–5087 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10854; Notice 2]

Michelin North America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 1,400 11R24.5 Michelin XDY–EX LRH tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New Pneumatic Tires for Vehicles Other than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 29, 2001, in the **Federal Register** (FR66 54572). NHTSA received no comments.

FMVSS No. 199, S6.5, mandates that the tire identification and the DOT symbol labeling shall comply with 49 CFR part 574.

Michelin's noncompliance relates to the mislabeling of approximately 1,400 tires. The tires are 11R24.5 Michelin XDY–EX LRH truck tires. Michelin states that, ''During the period of the 29th week of 2001 through the 36th week of 2001, the Spartanburg, South Carolina plant of Michelin North America produced a number of tires with a portion of the DOT tire identification number marking (as required on one side of the tire by 49 CFR 571.119 S6.5b) which did not meet the labeling specifications as described by 49 CFR 574.5.''

Instead of a required marking that reads: ''DOT B6 4F BVR X NN01'', the tires were marked: ''DOT B6 4F NN01 X BVR'' where NN is the week of fabrication and 01 is the year. According to Michelin, all performance requirements of FMVSS No. 119 are met or exceeded. Up to 1,200 noncompliant tires have been delivered to end-users. The remaining noncompliant tires have been isolated in Michelin's warehouses and will be either brought into full compliance with the marking requirements of FMVSS No. 119 or scrapped.

Michelin supports its application for inconsequential noncompliance by stating that they do not believe the marking error will impact motor vehicle safety because the tires meet all Federal motor vehicle safety performance standards and the non-compliance is one of labeling.

Michelin has reviewed and strengthened its procedures for detecting this type of error. Instead of checking the first piece of a particular production run at the press, future samples will be taken to a separate inspection station where exact labeling specifications are displayed for comparison. Based on this improvement, the likelihood of future errors of this type is reduced.

The agency believes that in the case of a tire labeling noncompliance, the measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's ability to identify them, should the tires be recalled for performance related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or right-most position. Michelin's switching of the date code with the third position reserved for optional code information should not cause confusion since that optional information consists of letters, not numbers. Consequently, persons reading the tire identification label would easily be able to identify the four digit date code.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Michelin's application is hereby granted, and the application is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Dated: February 22, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–5092 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34168]

West Texas & Lubbock Railroad Company, Inc. and the Burlington and Northern and Santa Fe Railway Company—Joint Relocation Project Exemption—in Lubbock, TX

On February 20, 2002, West Texas & Lubbock Railroad Company, Inc. (WTLR) filed a notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint relocation project with The Burlington Northern and Santa Fe Railway Company (BNSF) in Lubbock, Lubbock County, TX.[1] The transaction was scheduled to be consummated after February 22, 2002. The earliest the transaction can be consummated is February 27, 2002, the effective date of the exemption (7 days after the verified notice of exemption was filed).

Under the joint relocation project, WTLR and BNSF propose the following transactions:

(1) WTLR will relocate to a new connecting track, which is to be built on behalf of WTLR by the City of Lubbock, located between WTLR milepost 7.2 and BNSF milepost 83.6, in Lubbock;

(2) BNSF will grant overhead trackage rights to WTLR over BNSF's line extending from BNSF milepost 83.6, at Broadview, TX, to BNSF milepost 88.6, at Canyon Jct., TX, a distance of approximately 5 miles;

(3) WTLR will abandon approximately 6.1 miles of its line between WTLR milepost 7.2 and WTLR milepost 1.1, in Lubbock.

WTLR states that the proposed joint relocation project will not disrupt service to shippers.[2] Additionally, WTLR states that the relocated line and trackage rights will not involve an expansion of service by WTLR into a new territory but will enable WTLR to preserve its current connection with BNSF in downtown Lubbock once WTLR abandons its line.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction

[1] The joint relocation project is part of a plan to accommodate the upgrade of U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. *See State of Texas (Acting by and Through the Texas Department of Transportation)—Acquisition Exemption—West Texas & Lubbock Railroad Company, Inc.,* STB Finance Docket No. 33889 (STB served July 5, 2000 and Mar. 6, 2001).

[2] There are no shippers located on the WTLR line being abandoned.

of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.-Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 34168, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: February 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–4926 Filed 3–1–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Department of Veterans Affairs (VA) National Research Advisory Council will meet at the Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 20171, March 4, 2002, from 8:30 a.m. until 4 p.m. The meeting will be open to the public.

The meeting will begin with opening remarks and an overview by Dr. George Rutherford, Council Chairman. The Council will receive briefings on Biomedical Research Program, Career Development Program, and Research, Education, and Clinical Centers. During the afternoon, the Council will receive briefings on Bioterrorism Issues in VA Research and Intellectual Property Issues. The meeting will conclude with a discussion of above agenda topics, administrative issues and future agenda topics.

Established by the Secretary, the purpose of the Council is to provide external advice and review for VA's research mission. Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Office of Research and Development at (202) 273–8284.

Dated: February 27, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–5158 Filed 3–1–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 67, No. 42
Monday, March 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–128–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations to protect endangered species of terrestrial plants.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–128–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–128–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–128–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the importation or exportation of endangered species of terrestrial plants, contact Mr. James Petit de Mange, Inspection Station Coordinator, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–7839. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulation and Forfeiture Procedures.

OMB Number: 0579–0076.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for protecting endangered species of terrestrial plants by regulating the individuals or entities who are engaged in the business of importing, exporting, or reexporting these plants.

To carry out this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355. In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora regulations at 50 CFR 17.12 or 23.23 must obtain a general permit (PPQ form 622). This includes importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. This does not include persons engaged in business merely as carriers or customhouse brokers.

To obtain a general permit, these individuals or entities must complete an application (PPQ form 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the impending importation, exportation, and reexportation of endangered species, marking containers used for the importation, exportation, and reexportation of plants, and creating and maintaining records of importation, exportation, and reexportation.

The information provided by these information gathering activities is critical to our ability to carry out the responsibilities assigned to us by the Endangered Species Act. These responsibilities include the careful monitoring of importation, exportation, and reexportation activities involving endangered species of plants, as well as investigating possible violations of the Endangered Species Act.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.21355 hours per response.

Respondents: U.S. importers, exporters, and reexporters of endangered species.

Estimated annual number of respondents: 1,400.

Estimated annual number of responses per respondent: 11.666.

Estimated annual number of responses: 16,333.

Estimated total annual burden on respondents: 3,488 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–5074 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation; Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995, this Notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request reinstatement of a previously approved information collection in support of the regulations governing Peanut Warehouse Storage Loans and Handler Operations for the 1996–2002 crop of peanuts, as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before May 3, 2002, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Carolyn Hunter, Marketing Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, (202) 690–0013, facsimile (202) 720–9015; or Internet e-mail, Carolyn_Hunter@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peanut Warehouse Storage Loans and Handler Operations.

OMB Control Number: 0560–0014.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: Information relative to reports and recordkeeping regarding peanut handlers and peanut warehouse storage loans, as authorized by the Secretary of Agriculture, is used by the FSA and CCC to monitor and control compliance with the USDA's peanut program, as outlined in 7 CFR Parts 729 and 1446. If this information is not required and then monitored, then the 1996 Act could not be implemented as required by Congress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individual producers and warehouse operators.

Estimated Number of Respondents: 154,800.

Estimated Number of Responses Per Respondents: 376

Estimated Total Annual Burden of Respondents: 54,119.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Carolyn Hunter, at the address listed in the ''Additional Information or Comments'' section, above.

Comments will be summarized and included in the request for OMB approval of information collection. All comments will become a matter of public record.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–5008 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of CCC to request a revision and extension of an information collection approved under an emergency clearance with respect to the Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils ''Standards of Approval of Warehouses.'' The information collection will allow CCC to administer the Honey Storage Agreement as authorized by the CCC Charter Act, 15 U.S.C. 714 *et seq.*

DATES: Comments on this notice must be received on or before May 3, 2002, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Shirlene Engle, USDA, Farm Service Agency, Warehouse and Inventory Division, Storage Contract Branch, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, (202) 720–7398; e-mail *Shirlene—Engle@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Standards for Approval of Warehouses' Reporting and Recordkeeping Requirements.

OMB Control Number: 0560–0216.

Expiration Date: March 31, 2002.

Type of Request: Revision and extension of a currently approved information collection.

Abstract: The information collected under OMB Control Number 0560–0216, as identified above, allows CCC to administer the Honey Storage Agreement authorized by the CCC Charter Act. The information collected allows CCC to contract for warehouse storage and related services and to monitor and enforce all honey provisions of 7 CFR part 1423. The forms approved by this information

collection are furnished to interested warehouse operators or used by warehouse examiners employed by CCC to secure and record information about the warehouse and its operator. The information collected is necessary to provide those charged with executing contracts for CCC a basis upon which to determine whether the warehouse and the warehouse operator meet applicable standards for a contract and to determine compliance once the contract is approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .7 hours per response.

Respondents: Warehouse Operators.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 2,557 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; and (d) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Shirlene Engle at the address listed above. All comments will become a matter of public record.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–5009 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The original meeting of the Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee that had been scheduled for March 7 has been postponed and will now meet on Friday, April 5, 2002, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. During this meeting we will discuss the Forest Supervisor's response to committee advice on noxious weed management, and also participate in a discussion of proposed public involvement for an upcoming forest roads inventory. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 26, 2002.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 02–5083 Filed 3–1–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, March 8, 2002—9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 62 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of February 8, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Nebraska and New Mexico
VI. Briefing on Bioterrorism and Health Care Disparities
VII. Environmental Protection Agency Documents Hearing
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–5193 Filed 2–28–02; 12:54 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Shipper's Export Declaration (SED) Program.

Form Number(s): 7525–V (paper form), Automated Export System (AES) (automated form).

Agency Approval Number: 0607–0152.

Type of Request: Revision of a currently approved collection.

Burden: 944,188 hours.

Number of Respondents: 200,000.

Avg Hours Per Response: 11 minutes (7525–V), 3 minutes (AES).

Needs and Uses: The Census Bureau requests continued OMB clearance for the paper and electronic forms it uses in the Shipper's Export Declaration (SED) Program. These are the paper Shipper's Export Declaration (SED) 7525–V and its electronic equivalent, the Automated Export System (AES). The paper SED form has recently undergone substantial revisions. However, with this submission the Census Bureau intends to further revise the paper SED form to collect the forwarding agent's Employer Identification Number (EIN) by adding block 5b for ''Forwarding Agent's (IRS) or ID No.''. This change to the paper form will bring it up to date with pending changes in the Census Bureau's Export Regulations contained in 15 CFR, Part 30. These changes are already reflected in the AES. The Census Bureau is revising the electronic AES to meet the requirements for the mandatory AES filing of commodities identified on the Department of Commerce's Commerce Control List (CCL) and the Department of State's U.S. Munitions List (USML). This requirement is mandated by Public Law 106–113, Title XII, ''Security Assistance,'' Subtitle E, ''Proliferation Prevention Enhancement Act of 1999.''

This law requires that the export of items identified on the Department of Commerce, Bureau of Export Administration's (BXA) Commerce Control List (CCL) and the Department of State's United States Munitions List (USML) be reported via AES. The State Department has requested to have additional data items incorporated into the AES in order to accommodate the requirements of the International Traffic in Arms Regulations (ITAR). In meeting these requirements, the Census Bureau is adding the following data elements to the AES record: (1) Office of Defense Trade Controls (ODTC) Registration Number; (2) ODTC Significant Military Equipment (SME) Indicator; (3) ODTC Eligible Party Certification Indicator; (4) ODTC USML Category Code; (5) ODTC Unit of Measure; (6) ODTC Unit of Quantity; (7) ODTC Exemption Number; and (8) ODTC Export License Line Number. These additional data items requested by the State Department will not be incorporated on the paper SED since the items must be filed through AES. The incorporation of these data items into AES will allow for the elimination of the requirement for USPPIs or authorized filing agents to submit paper SEDs to the State Department. All of these revisions are referred to as a ''conditional'' data elements and are not required to be reported for all transactions. These revisions should not affect the average 11 minutes response time for the completion of the Commerce Form 7525–V or the average 3 minutes response time for the completion of the AES record.

The Census Bureau will allow the trade community a grace period of 90 days (September 3, 2002) to deplete their stock of the current SED forms and make revisions to the AES. However, during the grace period the Census Bureau will allow the use of both the old and revised Commerce Form 7525–V. As of September 3, 2002, only the Commerce Form 7525–V, collecting the forwarding agent's EIN will be accepted by the U.S. Customs Service and the Census Bureau. Furthermore, items identified on the CCL or USML, currently requiring a SED must be filed via AES.

The SED form and AES electronic equivalent provide the vehicles for collecting data on U.S. exports. Title 13, United States Code (U.S.C.), Chapter 9, Sections 301–307, mandates the collection of these data. The regulatory provisions for the collection of these data are contained in the Foreign Trade Statistics Regulations, Title 15, Code of Federal Regulations (CFR), Part 30. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals on U.S. International Trade in Goods and Services, a principal economic indicator and primary component of the Gross Domestic Product (GDP). The SED/AES also provides information for export control purposes as mandated under Title 50, U.S.C.. This information is used to detect and prevent the export of high technology items or military goods to unauthorized destinations or end users.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code (U.S.C.), chapter 9, sections 301–307; Title 15, Code of Federal Regulations (CFR), part 30.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5075 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at Urbana-Champaign; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–025. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* QPix Colony Picker with Gridding and Rearraying packages. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* See notice at 67 FR 4393, January 30, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a unique multi-tasking robotic system for picking, gridding and rearraying specific cell colonies with a rapid picking rate of 3500 colonies per hour and very high throughput useful for large scale DNA sequencing projects. The National Institutes of Health advises in its memorandum of December 3, 2001 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–5108 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–004.

Applicant: University of California, Lawrence Berkeley National Laboratory, Procurement 937–200, One Cyclotron Road, Berkeley, CA 94720.

Instrument: Electron Microscope, Model JEM–2010.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study carbon and inorganic nanotubes, nanowires and nanoscale electrical and mechanical devices. It will also be used to measure mechanical properties as the Young modulus, and yield strength and failure modes of single nanotubes.

Application accepted by Commissioner of Customs: February 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–5109 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–835]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Holly Hawkins at (202) 482–0414, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

PRELIMINARY DETERMINATION:

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled carbon steel flat products from Brazil. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed, on September 28, 2001, by Bethlehem Steel Corp.; United States Steel Corporation; LTV Steel Company, Inc.; Steel Dynamics, Inc.; National Steel Corp.; Nucor Corp.; WCI Steel, Inc.; and Weirton Steel Corp.

Case History

We initiated this investigation on October 19, 2001. See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea, 66 FR 54218 (October 26, 2001) (Initiation Notice). Since the initiation, the following events have occurred. On November 2, 2001, we issued a countervailing duty questionnaire to the Government of Brazil (GOB). The GOB identified three producers which exported subject merchandise to the United States during the period of investigation: Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA).

On November 13, 2001, the U.S. International Trade Commission notified the Department of its affirmative determination in the preliminary phase of the investigation. See Letter from the U.S. International Trade Commission to the U.S. Department of Commerce, dated November 20, 2001, stating that the ITC made affirmative determinations in the preliminary phase of the cold-rolled steel investigations. On November 30, 2001, the Department issued a partial extension of the due date for this preliminary determination until January 28, 2001. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 66 FR 63523 (December 7, 2001).

On November 14, 2001, petitioners alleged that countervailable benefits were being provided to cold-rolled producers and exporters during the POI under several additional GOB subsidy programs. On December 11, 2001, the Department decided to examine three of the newly-alleged programs and issued a second questionnaire related to those programs. See Memo to the File from the Team Through Barbara E. Tillman: Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil (December 11, 2001) (Memo to the File). On December 17, 2001, the GOB and CSN, USIMINAS, and COSIPA submitted responses to the Department's first questionnaire. Petitioners provided comments on these responses on December 28, 2001. On December 26, 2001, the GOB and CSN, USIMINAS, and COSIPA responded to the Department's second questionnaire. Petitioners provided comments on these responses on January 3, 2002. On January 17, 2001, we issued a supplemental questionnaire to the GOB. We received responses to this supplemental on February 5, 2002.

On January 18, 2002, we fully extended the deadline for the preliminary determination to February 25, 2002. See Certain Cold -Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations, 67 FR 3482 (January 24, 2002) (Extension Notice). On January 18, 2002, in response to a request from Ispat Inland, Inc., we added them as a party to this proceeding.

We issued another supplemental questionnaire on February 8, 2002. The response to these questionnaires were submitted on February 22, 2001. We note that, given the timing of this submission, we were unable to analzye it for purposes of this preliminary determination.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this preliminary determination.

Scope Comments

In the Initiation Notice, we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully- or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope

language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act). In addition, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Injury Test

Because Brazil is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure or threaten material injury to a U.S. industry. On November 19, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Brazil of subject merchandise (66 FR 57985). The views of the Commission are contained in the USITC Publication 3471 (November 2001), Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela; Investigation Nos. 701–TA–422–425 (Preliminary) and 731–TA–964–983 (Preliminary).

Alignment with Final Antidumping Duty Determinations

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determinations in the antidumping duty investigations of certain cold-rolled carbon steel flat products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, et al, 66 FR 54198 (October 26, 2001). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the companion antidumping investigations of certain cold-rolled carbon steel flat products.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2000.

Company Histories

USIMINAS

As stated in the Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5536 (February 4, 2000) (Cold-Rolled from Brazil Final), Usinas Siderurgicas de Minas Gerais (''USIMINAS'') was founded in 1956 as a venture between the GOB, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB included SIDERBRAS' operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia Vale do Rio Doce ''CVRD'', a majority government-owned iron ore producer, acquired 15 percent of USIMINAS' common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (the pension fund of the Bank of Brazil) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

In January 1999, a project was implemented for the corporate, financial, equity, and operational restructuring of USIMINAS and COSIPA. The result of this project was the reallocation of assets and liabilities between the two companies. According to the questionnaire responses, one result of this restructuring was a slight change in USIMINAS' shareholdings in COSIPA, to 49.77 percent from 49.8 percent in January 1999. Another result of the restructuring was the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA. These debentures are not redeemable. They are convertible on demand, at a fixed price, in groups of three, to one common (voting) and two preferred shares. As of the end of the POI, USIMINAS had not converted any of these debentures to shareholdings.

One of USIMINAS' minority shareholders is ''CVRD'', one of the world's largest producers of iron ore. CVRD also owns stock in Companhia Siderurgica Nacional (''CSN''). However, CVRD does not exercise direct or indirect control of either USIMINAS or CSN. See ''Cross-Ownership and Attribution of Subsidies'' section below, for a complete analysis of the extent of CVRD's control over USIMINAS and CSN.

COSIPA

Companhia Siderurgica Paulista (''COSIPA'') was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.77 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management, Ltd.; the COSIPA Employee Investment Club; and COSIPA's Pension Fund (FEMCO). See Cold Rolled from Brazil Final, 65 FR at 5544. The President of USIMINAS is a member of COSIPA's administrative council, which operates similarly to a board of directors. As discussed in the history of USIMINAS above, COSIPA and USIMINAS underwent a major corporate restructuring in January, 1999, resulting in the reallocation of assets and liabilities between the two companies and the subscription by USIMINAS to 892 million Reais in convertible debentures issued by COSIPA.

CSN

Companhia Siderurgica Nacional (''CSN'') was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao, S.A. (Docenave/CVRD), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN's shareholders during the POI were Vicunha Siderurgia, with 46.48 percent of the voting shares; Previ, with 13.85 percent; Docepar/CVRD (formerly known as Docenave/CVRD), with 10.33 percent; and a consortium of private investors, including Uniao Comercio e Partipacoes, Ltda.; Textilia, S.A.; the CSN Employee Investment Club; and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization. See Cold Rolled from Brazil Final, 65 FR at 5544.

SUBSIDIES VALUATION INFORMATION:

Allocation Period

Section 351.524(d)(2) of the Department's regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

Respondents did not rebut the presumption that the IRS tables should be used. Therefore, we are using the 15–year AUL as reported in the IRS tables to allocate any non-recurring subsidies under investigation which were provided directly to the producers and exporters of the subject merchandise.

Cross-Ownership and Attribution of Subsidies

There are three producers/exporters of the subject merchandise in this investigation: USIMINAS, COSIPA, and CSN. As discussed above, during the POI, USIMINAS owned 49.77 percent of COSIPA. The CVD Regulations, at section 351.525(b)(6)(ii), provide guidance with respect to the attribution of subsidies between or among companies which have cross-ownership. Specifically, with respect to two or more corporations producing the subject merchandise which have cross-ownership, the regulations direct us to attribute the subsidies received by either or both corporations to the products manufactured by both corporations. Further, section 351.525(b)(6)(vi) defines cross-ownership as existing ''between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations through common ownership of two (or more) corporations.'' The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' See Countervailing Duties Final Rule, 63 FR 63548, 65401 (November 25, 1998).

In this investigation, we preliminarily determine that USIMINAS' 49.77 percent ownership interest in COSIPA is sufficient to establish cross-ownership between the two companies because USIMINAS is capable of using or directing the individual assets of COSIPA in essentially the same ways it can use its own assets. In the Cold Rolled from Brazil Final, we found that USIMINAS' 49.8 percent shareholding, given the number and shareholdings of the remaining shareholders, was sufficient to establish cross ownership of the two companies and attribution of the two companies' subsidies to both companies. 65 FR at 5544.

In the instant investigation, we preliminarily determine that USIMINAS' shareholding, at 49.77 percent, together with the COSIPA convertible debentures that USIMINAS holds, are sufficient to establish that USIMINAS effectively held a majority interest in COSIPA during the POI. This satisfies the definition of cross-ownership provided in section 351.525(b)(6)(iv) of the regulations. Therefore, we preliminarily determine that USIMINAS' virtual majority share in COSIPA, and the COSIPA debentures held by USIMINAS that are not redeemable and are convertible to shares in COSIPA, are sufficient to establish cross-ownership between USIMINAS and COSIPA. Thus, we will continue to calculate one subsidy rate for USIMINAS/COSIPA. For all domestic subsidies, we will follow the methodology outlined in section 351.525(b)(6)(ii) of the regulations. In the case of export subsidies for USIMINAS/COSIPA, we will determine the countervailable subsidy by following the methodology outlined in sections 351.525(b)(2) and 351.525(b)(6)(ii) of the regulations.

In the Cold-Rolled from Brazil Final, the Department also examined the ownership of CSN. We note that, in the instant investigation, the same two entities, CVRD and Previ (the pension fund of the Bank of Brasil) that were found to have minority shareholdings in CSN in the Cold-Rolled from Brazil Final, still have minority holdings in both USIMINAS and CSN. 65 FR at 5544. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could, notwithstanding the absence of direct cross-ownership between them, have cross-ownership such that their interests are merged, and one company could have the ability to use or direct the assets of the other through their common investors. Since the Cold-Rolled from Brazil Final, CVRD's common shares in USIMINAS increased from 15.48 percent to 22.99 percent, while its common shares in CSN, through its wholly-owned subsidiary Docepar/CVRD, remained unchanged at 10.33 percent at the end of the POI. For this same period, Previ's holdings of common shares in USIMINAS fell slightly from 15 percent to 14.90 percent, and remained unchanged for its holdings in CSN at 13.85 percent.

As noted in the Cold Rolled from Brazil Final, both USIMINAS and CSN are controlled through shareholders' agreements which require participating shareholders (who together account for more than 50 percent of the shares of the company) to pre-vote issues before the Board of Directors and to vote as a block. 65 FR at 5544. While CVRD and Previ both participate in the CSN shareholders' agreement, and thus exercise considerable influence over the use of CSN's assets, neither CVRD nor Previ participates in the USIMINAS

shareholders' agreement, and therefore, neither is in a position to exercise any appreciable influence (beyond their respective 22.99 and 14.90 percent USIMINAS shareholdings) over the use of USIMINAS' assets. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38741, 38744 (July 19, 1999) (Hot-Rolled from Brazil Final), which noted the Department's verification of USIMINAS' shareholder agreement.

No new information has been submitted on the record of this investigation to indicate any changes in the terms of USIMINAS' shareholders' agreement since the Department's verification in the Hot-Rolled from Brazil Final. Therefore, consistent with our finding in the Cold-Rolled from Brazil Final and the Hot-Rolled from Brazil Final, we preliminarily determine that CVRD's and Previ's shareholdings in both USIMINAS and CSN are not sufficient to establish cross-ownership between those two companies under our regulatory standard. This absence of common majority or significant minority shareholders leads us to preliminarily determine that USIMINAS' and CSN's interests have not merged, i.e., one company is not able to use or direct the individual assets of the other as though the assets were their own. Thus, for the purposes of this preliminary determination, we have calculated a separate countervailing duty rate for CSN.

Equityworthiness

In accordance with section 351.507(a)(1) of the Department's regulations, a government provided equity infusion confers a benefit to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. See also section 771(5)(E)(i) of the Act. In past investigations, we determined that COSIPA was unequityworthy from 1977 through 1989, and 1992 through 1993; USIMINAS was unequityworthy from 1980 through 1988; and CSN was unequityworthy from 1977 through 1992. See Cold-Rolled from Brazil Final, 65 FR at 5545, citing to Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 58 FR 37295, 37297 (July 9, 1993) (Certain Steel Final); Hot-Rolled from Brazil Final, 64 FR at 38746. For purposes of this investigation, no new information or evidence of changed circumstances has been submitted which would cause us to reconsider these findings.

We note that, because the Department determined that it is appropriate to use a 15–year allocation period for non-recurring subsidies, equity infusions provided prior to 1986 no longer provide benefits in the POI. None of the parties have submitted information or argument, nor is there evidence of changed circumstances, which would cause us to reconsider these determinations.

Equity Methodology

Section 351.507(a)(3) of the Department's regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The applicable methodology is described in section 351.507(a)(6) of the regulations, which provides that the Department will treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is equivalent to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

To determine whether a company is uncreditworthy, the Department must examine whether the firm could have obtained long-term loans from conventional commercial sources based on information available at the time of the government-provided loan. See section 351.505(a)(4) of the Department's regulations. In this context, the term ''commercial sources'' refers to bank loans and non-speculative grade bond issues. See section 351.505(a)(2)(ii) of the CVD regulations.

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991–1993; and CSN 1983–1992. See Cold Rolled from Brazil Final, 65 FR at 5546, citing to Certain Steel Final, 58 FR at 37298 and Hot-Rolled from Brazil Final, 64 FR at 38747. No new information or evidence of changed circumstances has been presented in this investigation that would lead us to reconsider these findings.

Discount Rates

From 1984 through 1994, Brazil experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the Certain Steel Final, 58 FR at 37298, the Hot-Rolled from Brazil Final, 64 FR at 38745–38746 and the Cold-Rolled from Brazil Final, 65 FR at 5546, we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian currency discount rate, is to convert the information on non-recurring subsidies provided in Brazilian currency into U.S. dollars. If the date of receipt of the equity infusion was provided, we applied the exchange rate applicable on the day the subsidies were received, or, if that date was unavailable, the average exchange rate in the month the subsidies were received. Then we applied, as the discount rate, a long-term dollar lending rate in Brazil. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with the methodology applied in the Certain Steel Final; Hot-Rolled from Brazil Final; and Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014, 55019, 55023 (October 21, 1997).

As discussed above, we preliminarily determine that USIMINAS, COSIPA, and CSN were uncreditworthy in all the years in which they received equity infusions. Section 351.505 (a)(3)(iii) of the CVD Regulations directs us regarding the calculation of the benchmark interest rate for purposes of calculating the benefits for uncreditworthy companies: to calculate the appropriate rate for uncreditworthy companies, the Department must identify values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, Historical Default Rates of Corporate Bond Issuers, 1920 - 1997 (February 1998). See 19 CFR 351.505(a)(3)(iii). For the probability of default by a creditworthy company, we used the cumulative default rates for Investment Grade bonds as reported by Moody's. We established that this figure represents a weighted average of the cumulative default rates for Aaa to Baa-rated companies. The use of the weighted average is appropriate because the data reported by Moody's for the Caa to C-rated companies are also weighted

averages. For non-recurring subsidies, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 15–year term, since all of the non-recurring subsidies examined were allocated over a 15–year period.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (''Delverde III''), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993). The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

Methodology

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the beginning of the POI, the Department would then continue to countervail the remaining benefits of that subsidy. See Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel, 66 FR 49351 (September 27, 2001).

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership. See id.

Background

Using the approach described above, we have analyzed the information provided by the GOB and USIMINAS, COSIPA, and CSN to determine whether the pre-sale and post-sale entities of each company can be considered the same person. We began our analysis by estimating the point in time where government control of these companies was transferred to private entities as a result of their changes in ownership. As noted in their questionnaire responses, respondents state that since their initial privatization auctions of common shares, USIMINAS, COSIPA, and CSN have operated as independent entities. The Department finds that the information on the record of this investigation supports respondents' statement.

USIMINAS' International Offering Circular, provided in exhibit 28, appendix E of the GOB's December 17, 2001 questionnaire response, reflects USIMINAS' ownership status after its 1991 partial privatizations and before its international public offerings made in 1994. This circular notes, on page 64, that GOB control of USIMINAS had transferred to ''certain shareholders of the Company (including Bozano; Simonsen Centros Comerciais, S.A.; Nippon Usiminas; CIU; Banco Economico, S.A.; and certain other private sector shareholders), which in aggregate have voting power in excess of 50 percent of the voting shares of the Company.'' Furthermore, it states that these shareholders ''agreed to vote together on major corporate governance matters, corporate events and fundamental policies (including mergers, declaration of dividends and issuance of shares).'' Therefore, we preliminarily determine that control of USIMINAS was transferred from the GOB in 1991, after the initial privatization auctions.

As mentioned above in the ''Company Histories'' section, COSIPA was partially privatized by auction in 1993, and control of the company was acquired by a consortium of investors led by USIMINAS, with the GOB retaining a minority of the preferred shares. Based on our finding above that USIMINAS was no longer under the control of the GOB by 1991, we find that COSIPA's partial privatization in 1993, led by a privatized USIMIMAS, is the appropriate point in time to analyze whether COSIPA is the same entity that existed prior to and after its transfer of control to USIMINAS.

We reviewed the GOB's Notice of Conclusion of Privatization Process regarding CSN, which was provided in exhibit 29, appendix G of the GOB's December 17, 2001 questionnaire response. This exhibit reflects the initial ''Auction of Control Shares,'' on April 2, 1993, of 60.13 percent of CSN's capital stock that was acquired by 196 different participants. Only five of these participants acquired more than 5 percent of the capital stock, the largest acquisition being that of Docenave/CVRD, with 9.41 percent. By the end of 1993, the GOB had sold an additional 11.87 percent of CSN's capital stock in an offering to employees, and another 9.92 percent in the public offering noted above, resulting in the sale of 81.92 percent of CSN's capital stock. CSN's Employee's Pension Fund (CBS) controlled 9.2 percent of CSN's shares prior to its privatization. We, therefore, find that the year 1993 is the appropriate point in time to analyze whether CSN is the same business entity that existed before and after its change in ownership.

Continuity of General Business Operations

Although respondents state that there have been numerous changes in the operations of USIMIMAS, COSIPA, and

CSN since their privatizations, respondents have also noted that these changes were made as part of their ongoing operations and business decisions. See USIMINAS', COSIPA's, and CSN's December 17, 2001 questionnaire response at 79. According to respondents, since their privatizations, all of these companies have acquired interests in steel distributors or service centers; have initiated new management techniques or sales strategies; and, have focused on developing new product lines and value-added products. However, respondents add that none of these changes were directly related to their privatizations. Id. at 79.

Continuity of Production Facilities

Respondents note that, since their privatizations, USIMINAS, COSIPA, and CSN have all added and shut down facilities and equipment in order to upgrade their production processes. According to respondents, all the companies have upgraded their blast furnaces in order to increase production capacities; USIMINAS and CSN have also added coating facilities in an effort to expand their product lines. Again, respondents note that these changes were not directly related to their privatizations, but were part of the companies' ongoing and business decisions.

Our review of USIMINAS' production information indicates little change in the quantity and composition of its production following its privatization. The comparative production data provided at pages 4–5 of USIMINAS' 1992–1993 financial statement (exhibit 34 of the GOB's December 17, 2001 response) indicates that USIMINAS' production totals declined slightly, by 1.6 percent, from 1991 to 1992, and that its product mix remained essentially unchanged for this period. In addition, there was only a slight change in its labor productivity ratio of 386 tons/man/year in 1992 (an increase of 3 over 1991). A similar review of COSIPA's 1993 financial statement at pages 5 and 11, indicated that annual production of uncoated flat-rolled steel products remained steady, declining slightly from 2.6 in 1992 to 2.5 million tons in 1993. However, COSIPA's labor productivity ratio in 1993 did increase to 223.9 tons/man/year from 208.6 tons/man/year in 1992. No specific information was provided about CSN's continuity of production facilities made as a result of its change in ownership in 1993.

Continuity of Assets and Liabilities

The privatizations of USIMINAS, COSIPA, and CSN were accomplished through the sale of the GOB's shares to private investors, and did not involve the transfer of any of the corporate assets of the companies in question. According to respondents, the privatizations of these companies involved the purchasing of shares of an ongoing corporation. As a result, the new shareholders of these companies continued to maintain an ownership interest that included both the assets and liabilities of the privatized companies. Therefore, the liabilities and assets of USIMINAS, COSIPA, and CSN remained intact throughout the privatization process. See GOB's December 17, 2001 questionnaire response at 56.

Retention of Personnel

After the privatizations of USIMINAS, COSIPA, and CSN, respondents state that management began to reorganize the personnel of these companies in order to adjust to the private sector and improve production efficiencies. Specifically, USIMINAS revised its sales strategy by establishing closer customer relationships and additional customer services that required a modest increase in its sales staff and a reduction in the number of sales managers. This is supported by information provided at page 9 of USIMINAS' 1992–1993 financial statement, indicating that the number of USIMINAS' hired personnel in 1992 was 2.7 percent below the number of its personnel in 1991. COSIPA also experienced a 16.8 percent reduction in personnel from December 1992 to December 1993, as reflected on page 11 of COSIPA's 1993 financial statement. This period encompasses four months from the time of COSIPA's initial privatization auction in August 1993, in which control was transferred from the GOB to USIMINAS. No specific information was provided about CSN's personnel adjustments made as a result of its change in ownership in 1993.

Summary

Based on the analysis above, we determine that the vast majority of the business aspects of USIMINAS, COSIPA, and CSN remained unchanged by their respective privatizations. All of these companies still operate in a manner similar to that characterizing their operations prior to privatization. As respondents themselves noted, the legal status of these businesses did not change as a result of their privatizations. Instead, the GOB's privatization process involved the purchasing of shares of ongoing corporations that resulted in the transfer of control and ownership, and in the assumption of each company's existing assets and liabilities. Any changes made in the business operations of USIMINAS, COSIPA, and CSN can be attributed to the ongoing operations and business decisions of these companies, as stated by respondents themselves. In addition, the production levels and product mix of each company remained essentially the same after its change in ownership. While there is information that indicates that the management and personnel of these companies may have been altered as a result of their privatizations, on balance, we do not consider these changes to be sufficient to find that USIMINAS, COSIPA, and CSN were different entities after privatization. As respondents themselves have noted, most of the changes were due to ongoing business decisions and were not directly related to privatization itself. Accordingly, our analysis leads us to preliminarily determine USIMINAS, COSIPA, and CSN to be the same entities which benefitted from subsidies bestowed by the GOB prior to their privatizations.

Trading Companies

Section 351.525(c) of the regulations requires that the benefits from subsidies provided to a trading company which exports subject merchandise be cumulated with the benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company, regardless of their affiliation. In its questionnaire response, the GOB indicated that seven trading companies exported cold-rolled steel to the United States during the POI. These trading companies purchased the cold-rolled steel from the producers subject to this investigation. The GOB, however, did not identify by name these trading companies nor did the GOB provide any quantity and value information, explaining that it was unable to determine whether any of the steel products exported by these trading companies to the United States consisted of subject merchandise. We issued supplemental questionnaires to the GOB and USIMINAS, COSIPA, and CSN, and requested that they identify these trading companies and provide the quantity and value of subject merchandise shipped by them during the POI and that they provide information concerning the use by the trading companies of any of the non-company-specific subsidy programs during the POI. This information was provided by the parties on February 22, 2002. We have not had the opportunity to analyze this information for purposes of this preliminary determination, but

we will consider this information for purposes of our final determination.

Programs Preliminarily Determined to be Countervailable

I. Equity Infusions into CSN, USIMINAS, and COSIPA

Petitioners alleged that the GOB provided equity infusions during the following periods: to CSN from 1986 through 1992; to USIMINAS from 1986 through 1988; and to COSIPA from 1986 through 1993. In our past investigations of hot-rolled steel from Brazil and cold-rolled steel from Brazil, we found that the GOB, through SIDERBRAS, provided equity infusions to USIMINAS, CSN and COSIPA. See Hot-Rolled from Brazil Final, 64 FR at 38747, 38748 and Cold-Rolled from Brazil Final, 65 FR at 5546, 5547. For the reasons cited in the last cold-rolled investigation by the Department (see id.), and because none of the parties have provided new information or argument which would lead us to reconsider this determination, we are continuing to find, under section 771(5)(E) of the Act, that equity infusions were provided to CSN from 1986 through 1992, to USIMINAS from 1986 through 1988, and to COSIPA from 1986 through 1993. The equity infusions into CSN in 1992, and into COSIPA in 1992 and 1993, were made through debt-for-equity swaps and are discussed in more detail below.

As in the previous cold-rolled investigation, we will treat the pre–1991 equity infusions as grants given in the year the infusions were received. These equity infusions constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771(5A)(D)(i) of the Act because they were provided specifically to each company. Accordingly, we preliminarily determined that the pre–1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we treat equity infusions into unequityworthy companies as grants given in the year the infusion was received. These infusions are non-recurring subsidies in accordance with section 351.524(c)(1) of the CVD Regulations. Consistent with section 351.524(d)(3)(ii) of the CVD regulations, because USIMINAS, COSIPA and CSN were uncreditworthy in the relevant years (the years the equity infusions were received), we applied an uncreditworthy discount rate, as discussed in the ''Discount Rate'' section above. As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that the three companies continue to benefit from subsidies received prior to their privatizations, and, therefore, the full value of the benefits allocable to the POI from these equity infusions is being used in the calculation of the companies' subsidy rates.

Additionally, we find, as in the last cold-rolled investigation, that the GOB provided debt-for-equity swaps to CSN in 1992 and COSIPA in 1992 and 1993. See Cold-Rolled from Brazil Final, 65 FR at 5547, 5548. Prior to COSIPA's privatization, and on the recommendation of consultants who examined CSN and COSIPA, the GOB made a debt-for-equity swap for CSN in 1992 and two debt-for-equity swaps for COSIPA in 1992 and 1993. We previously examined these swaps and determined that they were not consistent with the usual investment practices of private investors; constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act; and, therefore, conferred benefits to CSN and COSIPA in the amount of each conversion. See id., citing to Hot-Rolled from Brazil Final, 64 FR at 38747, 38748. These debt-for-equity swaps are specific within the meaning of section 771(5A)(D)(i) of the Act because they were limited to CSN and COSIPA. Accordingly, we preliminarily determine that the GOB debt-for-equity swaps provided to CSN in 1992 and COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act. No party has provided any new information or argument which would lead us to reconsider this determination.

Each debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated each debt-for-equity swap as a grant given in the year the swap was made, in accordance with section 351.507(b) of the regulations. Further, these swaps, as equity infusions, are non-recurring in accordance with section 351.524(c)(1) of the regulations. Because CSN and COSIPA were uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the regulations, as discussed in the ''Discount Rates'' section above.

As a result of our privatization approach outlined in the ''Changes in Ownership'' section above, we preliminarily find that CSN and COSIPA continue to benefit from subsidies received prior to its privatization, and therefore, the full value of the benefits allocable to the POI from these equity infusions and debt-for-equity swaps is being used in the calculation of CSN's and COSIPA's subsidy rate. We summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 11.27 percent ad valorem for USIMINAS/COSIPA. For CSN, we summed the benefits allocable to the POI from each equity infusion and swap, and divided this total by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 7.44 percent ad valorem for CSN.

II. ''Presumed'' Tax Credit for the Program of Social Integration (PIS) and the Social Contributions of Billings (COFINS) on Inputs Used in Exports

Background

In the new allegations submitted on November 14, 2001, petitioners stated that the GOB provides a ''presumed'' tax credit for PIS and COFINS taxes. Petitioners allege that PIS and COFINS are social welfare charges and, therefore, fall within the Department's definition of a direct tax under section 351.102(b) of the Department's regulations. The remission of direct taxes constitutes a countervailable subsidy under section 351.509(a) of the Department's regulations. However, petitioners alleged that, even if the Department should find these to be indirect taxes, the remission of these taxes through the ''presumed'' tax credit would still confer a countervailable benefit, because the credit is excessive and is not tied to the actual tax incidence of PIS and COFINS taxes paid on inputs consumed in the production of the exported merchandise. On December 11, 2001, the Department initiated on this program to determine whether the ''presumed'' tax credits exceeded the actual incidence of PIS and COFINS taxes. See Memo to the File.

According to the PIS/COFINS tax credit legislation provided by the GOB, this tax credit program was established on December 13, 1996. See PIS/COFINS Credit Legislation in exhibit 3 of the GOB's questionnaire response dated February 5, 2002. The ''presumed'' tax credit rate for PIS and COFINS is 5.37 percent. The GOB has devised a single rule for ''administrative convenience'' in calculating the ''presumed'' tax credit which applies to all industries, and assumes two stages of processing and therefore, two stages of tax incidence of

PIS and COFINS on all inputs consumed in exports.

The GOB states that PIS and COFINS taxes are incident on all domestic sales of goods and services. Each company is responsible for making monthly payments of PIS and COFINS based on the total sales value of its domestic sales of goods and services. Our review of the legislation governing COFINS indicates that these tax proceeds are used for financing the ''Social Insurance Services,'' which are ''intended solely to defray {the} cost of health care and social security and assistance work.'' The goal of the PIS tax program, as reflected in the legislation, is to ''bring about the integration of employees in the life and growth of their companies.'' See PIS and COFINS legislation in exhibit 3 of the GOB's December 26, 2001 questionnaire response. During the POI, PIS and COFINS taxes were calculated at rates of 0.65 percent and 3.0 percent, respectively. The original COFINS rate, as reflected in its tax legislation noted above, was 2.0 percent.

The GOB states that the minimum incidence of PIS and COFINS taxes that can occur on domestic inputs is at 3.65 percent, since each input is produced and purchased at least once, and every good and service sold in Brazil is subject to these taxes. However, the GOB also notes that the incidence of PIS and COFINS can vary from once to more than five times, depending on the complexity of the goods purchased, and the number of distinct stages of production and intermediate producers. The GOB has not undertaken an examination of the PIS and COFINS tax incidence on an industry-specific basis. The GOB states that because ''... the incidence of PIS/COFINS on inputs could vary not only from industry to industry, but also within the industry itself as well as by virtue of the nature of the inputs purchased, the GOB determined that it would be a practical impossibility to determine the actual incidence in every case. Nor was it in any position to check the actual incidence from individual taxpayer claims, as it would in effect have to look at every input and determine how many stages of processing each input had undergone.'' See GOB's February 5, 2002 submission at 14–15. As a result, the GOB adopted a single method for determining the ''presumed'' tax credit of 5.37 percent. Companies can claim the credit of 5.37 percent as part of their regular monthly federal taxes. The credit of 5.37 percent is calculated based on the previous PIS/COFINS rate of 2.65 percent with the presumption that the PIS and COFINS taxes are paid at two stages of production before the final stage of production when the product is then exported. During the POI, CSN, COSIPA, and USIMINAS all applied for and received the PIS/COFINS tax credit.

Our review of the information provided by respondents indicates that the ''presumed'' PIS and COFINS tax credit is applied quarterly against IPI tax payments. To calculate the PIS/COFINS tax credit, a company divides its export revenues, accumulated through the prior month, by its total gross sales revenues for the same period. This export revenue ratio is then multiplied by the company's production costs or total domestically-purchased inputs accumulated over the same period in order to determine the percentage of domestically- purchased inputs used in the production of the export products. This figure is multiplied by the ''presumed'' tax credit rate of 5.37 percent to yield the year-to-date accumulated tax credit. In order to calculate the credit for the current month, the credit used through the prior month is deducted from this accumulated tax credit. CSN stated that, in order to be conservative, they do not claim the total amount of available credit permitted by law. See USIMINAS', COSIPA's, and CSN's February 5, 2002 submission at 9.

The GOB uses the company income tax return and information pertaining to a company's cost of goods sold to track the costs of domestically-purchased inputs which are used in calculating the PIS/COFINS tax credit. According to the GOB, each company maintains a record of the costs of domestic inputs consumed in production. We reviewed the PIS/COFINS tax credit legislation and noted that the calculation of the costs of these domestic inputs is intended to be based on the ''total value of the purchases of raw materials, semi-finished products and packaging materials.'' See exhibit 3 of the GOB's February 5, 2002 questionnaire response.

Analysis

We examined the information provided by the GOB in the PIS and COFINS legislation, as noted above, to determine the manner in which the GOB assesses PIS and COFINS taxes. Article 2 of the COFINS legislation states that ''corporate bodies'' will contribute two percent, ''charged against monthly billings, that is, gross revenue derived from the sale of goods and services of any nature.'' Likewise, Article ''Second'' of the PIS tax law (also found in the PIS and COFINS legislation) provides similar language stating that this tax contribution will be calculated ''on the basis of the invoicing.'' The PIS legislation further defines invoicing under Article ''Third'' to be the gross revenue ''originating from the sale of goods.''

Section 351.102(b) of the Department's regulations defines an indirect tax as a ''sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge.'' As noted in the PIS and COFINS legislation, these taxes are derived from the ''monthly invoicing'' or ''invoicing'' originating from the sale of goods and services. The GOB supported this interpretation by stating that ''PIS and COFINS taxes are, by law, incident on all domestic sales of goods and services sold.'' See GOB's February 5, 2002 questionnaire response at 12. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, and we are treating PIS and COFINS taxes as indirect taxes for purposes of this preliminary determination.

We intend to continue to examine whether PIS and COFINS taxes should be construed as social welfare charges. Pursuant to section 351.102(b) of the Department's regulations, if we determined a tax program to be a social welfare charge, then it would be classified as a direct tax rather than an indirect tax.

The GOB has stated in its response that PIS and COFINS are not social welfare charges, but are normal taxes. According to the GOB, social welfare charges are administered by the agencies responsible for their disbursement. Thus, the Imposto Nacional para Seguridade Social (INSS), the GOB's social security tax, is administered by the National Social Security Institute, whereas the PIS and COFINS taxes are administered by the Secretariat of Federal Revenue. In addition, most Brazilian companies have a special account (denominated ''encargos sociais'') for social welfare charges, such as the social security tax, but PIS and COFINS are not included in this account and are instead accounted for as normal taxes on the companies' accounting books. Id. at 9–10. However, we intend to examine whether the stated purpose of the COFINS legislation in supporting ''health care and social security and assistance work,'' renders this tax a social welfare charge.

Based on our preliminary determination that PIS and COFINS are indirect taxes, we examined how the GOB calculates the ''presumed'' tax credit related to these taxes. The law pertaining to this tax credit, as

mentioned above, states that this tax credit is determined by using ''the total value of the purchases of raw materials, semi-finished products and packaging materials.'' These items fit the description of what the Department normally considers prior-stage inputs. Therefore, we are examining the countervailability of this program under section 351.518(a)(2) of our regulations, which covers the ''Remission of prior-stage cumulative indirect taxes'' upon export. As noted above, these tax credits are calculated using an ''export revenue ratio'' in order to segregate and credit those inputs that were used in respondents' exported products.

In order for the Department to determine whether a benefit exists, we must determine whether the amount remitted exceeds the incidence of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of exports. Generally, the Department will determine the amount of the benefit to be the difference between the amount remitted and the amount of prior-stage cumulative taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. However, to use this measure of the benefit, the Department must be satisfied that certain criteria are met. Thus, section 351.518(a)(4)(i) provides that the Department will consider that the entire amount of the remission confers a benefit unless;

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

Our review of the information on the record of this investigation indicates that, although the GOB does have a system in place for calculating an amount for the ''presumed'' credit due, the system is not effective for calculating the credit corresponding to the ''actual'' inputs consumed in the exports of these companies. As noted above, the GOB stated that a single rule was used for ''administrative convenience'' to determine the rate of the credit. This rule applies to all industries and assumes two stages of production, and therefore, two levels of tax incidence for the PIS and COFINS taxes charged on inputs. However, the GOB was unable to demonstrate how the PIS/COFINS tax credit of 5.37 percent is reflective of the tax incidence incurred by the inputs through the stages of production associated with the steel industry.

Respondents' explanation of how each of the companies calculate the ''presumed'' tax credit for PIS and COFINS states that the export revenue ratio is multiplied by either ''raw material'' costs or ''production costs.'' See USIMINAS', COSIPA's, and CSN's February 5, 2001 submission at 8. Production costs usually include cost elements in addition to prior-stage inputs, such as depreciation, overhead and labor costs. In addition, USIMINAS provided the list of ''raw material'' inputs it uses to calculate this tax credit. This list includes machine parts, which are items that are not normally considered inputs. See e.g., Final Results of Countervailing Duty Review: Ball Bearings and Parts Thereof from Thailand, 62 FR 728, 731 (January 6, 1997). Therefore, we preliminarily determine that the GOB's system used for calculating the amount of this ''presumed'' tax credit, of tracking the appropriate inputs consumed and measuring the actual PIS and COFINS tax incidence, is ineffective.

In section 351.518(a)(4)(ii) of the regulations, additional criteria are to be considered before the Department reaches a determination that the entire amount of the rebate or remission confers a benefit:

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

Neither the GOB nor the companies involved have met the terms of section 351.518(a)(4)(ii) by carrying out an examination of the actual inputs involved, nor of whether the inputs are consumed in production and in what amounts.

As a result, the Department preliminarily finds that the entire amount of this tax credit is countervailable as an export subsidy. For CSN, we have calculated the ad valorem rate in accordance with section 351.525(b)(2) by dividing the total tax credit claimed during the POI by CSN's total export sales during the POI. In calculating a combined rate for USIMINAS/COSIPA, we calculated the benefit by first combining the tax credits claimed by both USIMINAS and COSIPA during the POI, and then dividing this total benefit amount by their combined export sales during the POI. This is consistent with the calculation methodology outlined under section 351.525(b)(6)(ii) for corporations with cross-ownership. On this basis, we determine the net subsidy to be 0.78 percent ad valorem for CSN and 1.31 percent ad valorem for USIMINAS/COSIPA.

Program Preliminarily Determined to be Not Used

Programa de Financiamento as Exportacoes (''PROEX'')

We initiated on this program based on petitioners' allegation that the GOB provided export financing through the Programa de Financiamento as Exportacoes (''PROEX'') at preferential interest rates.

According to the questionnaire responses, PROEX was created by the GOB on June 1, 1991 by Law No. 8187/91 with the purpose of offering Brazilian companies the opportunity to finance exports at rates equivalent to those available on international markets. PROEX is administered by the Comite de Credito as Exportacoes (''the Committee''), with the Ministry of Finance serving as its executive. Day-to-day operations of PROEX are conducted by the Banco do Brasil, the Central Bank of Brazil. There are two components to the PROEX program. ''PROEX Financiamento'' (or PROEX Financing) provides direct financing for a portion of the funds required for the transaction. ''PROEX Equalizacao'' (or PROEX Equalization) permits interest equalization, by which the government covers the difference between the interest rate obtained from a private bank and the prevailing rate in the international market.

According to the GOB and USIMINAS, CSN, and COSIPA, no PROEX funds were disbursed to finance any exports of subject merchandise to the United States during the POI. Therefore, we preliminarily determine that this program was not used during the POI.

Programs for Which Additional Information Is Needed

I. National Bank for Economic and Social Development (''BNDES'') Fund for the Modernization of the Steel Industry

In their submission of November 14, 2001, petitioners alleged that the National Bank for Economic and Social Development (''BNDES'') offers financing for the steel industry through

the Fund for the Modernization of the Steel Industry (Fund). Petitioners alleged that the Fund was specifically created by BNDES, a GOB development bank, to support the development of the Brazilian steel industry after its privatization. Petitioners provided information showing that loans through the Fund were allegedly made by BNDES to the Brazilian steel industry at interest rates below those on comparable commercial loans. On December 11, 2001, we decided to investigate this program. See Memo to the File.

The GOB reported that the Fund for the Modernization of the Steel Industry does not exist. However, based on our review of the questionnaire responses, we found that all of the companies under investigation had outstanding loans from BNDES during the POI and that BNDES operates a number of different financing programs, some of which may provide countervailable benefits. We note that, in the Preliminary Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, the FINAME program, which is administered by BNDES and agent banks throughout Brazil, and provides capital financing to companies located in Brazil, was found to be an import substitution program that provided countervailable benefits to producers and exporters of wire rod. 67 FR 5967, 5972 (February 8, 2002). The FINAME program provides for the leasing of new machinery and equipment to producers in Brazil. Although the GOB reported that the BNDES Fund for the Modernization of the Steel Industry does not exist, we are continuing to investigate BNDES and a number of lending programs that may be offered by BNDES to determine whether they provided countervailable subsidies, during the POI, to producers and exporters of cold-rolled steel from Brazil. We are seeking additional information from the GOB and the companies on BNDES loan programs for purposes of our final determination.

II. Program to Induce Industrial Modernization of the State of Minas Gerais (PROIM)

In their allegations filed on November 14, 2001, petitioners alleged that the state of Minas Gerais provides concessionary project financing through the PROIM program for up to 50 percent of the total investment, with grace periods not to exceed 36 months. On December 11, 2001, we decided to investigate this program because petitioners' arguments and supporting documentation indicated that PROIM may be an import substitution program which finances the use of Minas Gerais-produced raw materials and inputs. See Memo to the File.

According to the questionnaire responses, the PROIM program is a state-administered program that is intended to encourage companies located in the state of Minas Gerais to increase production; of the three respondent companies, only USIMINAS is located in Minas Gerais. PROIM allows for the deferral of state taxes in the state of Minas Gerais. The tax that is deferred is known as the Imposto Sobre Circulacao da Mercadoria e Servicos (tax on the circulation of merchandise and services), or ICMS. ICMS is a value-added tax. Companies located in the state of Minas Gerais must charge 18 percent on sales within the state, 12 percent on sales to outside of the state other than to states in the North and Northeast regions, and 7 percent on sales to states in the North and Northeast regions. Sales for export and sales to the free port of Manaus are exempt from the tax.

The PROIM program provides that companies that increase their production within the state of Minas Gerais may obtain a deferral of that portion of the ICMS which applies to the increased production.

Since there is a deferral of a state tax that is administered by a state government, our specificity analysis must focus on whether the deferral is limited to an enterprise or industry or group thereof located within the state of Minas Gerais. See section 351.502 of the Department's regulations. We are still in the process of gathering additional information concerning use of this program within the state and, therefore, for purposes of this preliminary determination, we are not making a finding with respect to this program.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation. We have preliminarily determined that the total estimated countervailable subsidy rate is 12.58 percent ad valorem for USIMINAS/COSIPA and 8.22 percent ad valorem for CSN. With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates and rates based entirely on facts available. Because none of the companies has a de minimis or zero rate, or a rate based entirely on facts available, we have weight-averaged the companies' rates to calculate an ''all others'' rate of 11.90 percent ad valorem.

Producer/Exporter	Countervailable Subsidy Rate
USIMINAS / COSIPA	12.58%
CSN	8.22%
All Others	11.90%

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Brazil produced or exported by USIMINAS, COSIPA, CSN, or any other company, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination.In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals

who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, unless otherwise informed by the Department, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than five days from the date of filing of the case briefs. An interested party may make an oral presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5104 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–823]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination: With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of certain cold-rolled carbon steel flat products from France. For information on the estimated countervailing duty rates, see section below on ''Suspension of Liquidation.''

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam at (202) 482–0176; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are to our regulations as codified at 19 CFR part 351 (2001).

The Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Co., Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea,* 66 FR 54218 (October 26, 2001) (''*Initiation Notice*'')).

On November 3, 2001, we issued countervailing duty questionnaires to the Government of France (''GOF''), the European Commission (''EC''), and Usinor, a producer/exporter of the subject merchandise from France. Our decision to select Usinor to respond to our questionnaire is explained in the Memorandum to Susan H. Kuhbach, ''Respondent Selection,'' dated November 2, 2001, which is on file in the Central Records Unit, room B–099 of the main Department building.

On November 30, 2001, we extended the time limit for the preliminary determination of this investigation to January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 63523 (December 7, 2001).

On November 15, 2001, Emerson Electric Co. submitted a request to exclude certain merchandise from the scope of this investigation. On February 22, 2002, the petitioners submitted an objection to this request. *See* section below on ''Scope of the Investigation: Scope Comments'' for an analysis of these submissions and the Department's resulting determination.

We received a response to our countervailing duty questionnaire from the EC on December 20, 2001, and from the GOF and Usinor on December 21, 2001. On January 2, 2002, the petitioners submitted comments regarding these questionnaire responses.

We issued supplemental questionnaires to the GOF and Usinor on January 7, 2002, and received responses to these questionnaires on January 16, 2002.

On January 18, 2002, we further extended the time limit for the preliminary determination of this investigation to February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 67 FR 3482 (January 24, 2002).

On January 24, 2002, we requested that Usinor provide its sales values for its French production from 1988 through 2000. *See* Memorandum to File, dated January 24, 2002. Usinor submitted this information on January 29, 2002.

We issued another supplemental questionnaire to Usinor on February 12,

2002, and received a response to this questionnaire on February 15, 2002.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, *see* the Scope Appendix attached to the *Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully-or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of certain cold-rolled carbon steel flat products from France. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (November 19, 2001).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations (*see Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001)). The companion antidumping duty investigations and this countervailing duty investigation were initiated on the same date and have the same scope. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigations of certain cold-rolled carbon steel flat products.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

The period of investigation (''POI'') for which we are measuring subsidies is the calendar year 2000.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Feb. 2, 2000), *reh'g en banc denied,* 2000 U.S. App. LEXIS 15215 (June 20, 2000) (''*Delverde III*''), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.[1] The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' *Id.,* 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the CAFC's decision in *Delverde III,* and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review,* 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as: (1) Continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity

[1] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37225 (July 9, 1993).

under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

In *Final Results of Redetermination Pursuant to Court Remand: GTS Industries S.A.* v. *United States,* No. 00–03–00118 (December 22, 2000) and *Final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al* v. *United States,* No. 99–09–00566 (December 20, 2000), the Department determined that pre-sale Usinor is the same person as respondent Usinor. The following summarizes the analysis performed in these remands, which continues to hold true for this investigation.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called ''Stable Shareholders.''

In analyzing whether the producer of merchandise subject to this investigation is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same ''person'' as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to respondent Usinor, and continue to benefit Usinor during the POI.

1. Continuity of General Business Operations

Usinor produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor since 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively).

This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the period of investigation shows the same three major products being produced by the same three subsidiaries. In 1994 (prior to the privatization), flat products contributed 55 percent of consolidated sales, while stainless and specialty products contributed 20 and 18 percent respectively. In the years following privatization (1995, 1996 and 1997), flat carbon steels continued to contribute 49–53 percent of Usinor's consolidated net sales, while stainless and alloy, and specialty steel accounted for 23–25 percent, and 19–21 percent, respectively.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.,* did it retain the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994. In 1997, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales). The construction industry was the second largest purchaser in both years, accounting for 26 and 23 percent, respectively.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. As is clear from a comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report, steel production facilities have remained intact. The company continued to focus on an ''all steel'' strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same ''person'' that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Act require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from: (1) The petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* Section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Section 782(d) and 782(e) require the Department to inform a respondent if

there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, timely, verifiable, can serve as a reliable basis for reaching our determination, and the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) directs the Department to not decline consideration of the deficient submissions.

In this case, the GOF did not provide the information altogether for the Investment/Operating Subsidies, instead answering our question by stating ''this question is not readily answerable given the multiplicity of programs involved.'' *See* GOF Questionnaire Response, dated December 21, 2001, at II–13. Moreover, in previous proceedings where this same program was investigated, the GOF also failed to provide the same requested information in response to the same question, providing similar answers. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France,* 64 FR 73277, 73282 (December 29, 1999) (''*French Plate*'') and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France*, 64 FR 30774, 30779 (June 8, 1999) (''*French Stainless*''). The relevant pages of the questionnaire responses in those investigations have been placed on the record of this investigation. *See* Memorandum to File, ''Miscellaneous Information'' at Attachment 1 (''Miscellaneous Information Memo''). Thus, the GOF was made aware of the specific information that the Department needed for its analysis on several occasions, yet consistently failed to provide sufficient responses. Thus, pursuant to 782(d) and (e), the Department was left with no alternative but to apply facts available.

The GOF never stated why it was not able to provide the information requested, just that the answers were not ''readily answerable.'' Furthermore, the GOF never requested an extension of time from the Department in which it could follow up with more extensive research and retrieve the information requested. Instead, the GOF basically informed the Department that because the information was not readily answerable, it would not answer our request. Furthermore, the GOF stated that it would provide further documentation at verification, but the Department's regulations state that we do not accept new information at verification. 19 CFR 351.301)(b)(1). Based on the GOF's responses and all of the information available on the record, we, therefore, do not believe the GOF responded to the best of its ability to our questionnaire. Because the GOF did not provide the distribution of benefits for the investment/operating subsidies, the Department is unable to determine the specificity of this program. We therefore find, pursuant to sections 776(a) and (b) of the Act, that the use of adverse facts available in this case is necessary, and subject to this analysis find that the relevant investment/operating subsidy programs were *de facto* specific.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For certain cold-rolled carbon steel flat products, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. We note, however, that the one allocable subsidy received by Usinor, FIS Bonds, has previously been allocated over a company-specific AUL of 14 years. The 14-year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (''*French Certain Steel*'') and was subsequently used to allocate this same subsidy in *French Plate* and *French Stainless*. Because the 14-year AUL was calculated using company-specific information more contemporaneous with the bestowal of the subsidy in question, we have continued to use the 14-year AUL to allocate the benefits of the FIS bonds in this proceeding. *See French Plate*, 64 FR at 73293.

For non-recurring subsidies to Usinor, we applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than being allocated over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel*, we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. No new information has been presented in this investigation to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this investigation, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this investigation.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditworthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa-to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). *See* Miscellaneous Information Memo at Attachment 2. For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to

enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the International Monetary Fund. *See* Miscellaneous Information Memo at Attachment 3. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on the average, short-term interest rate in France as reported in the *International Financial Statistics*, as published by the International Monetary Fund (*See* Miscellaneous Information Memo at Attachment 4). Usinor did not report a company-specific short term interest rate.

I. Programs Preliminarily Determined to Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sidérurgique (''FIS''), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS bonds into equity as countervailable equity infusions. *See French Certain Steel*, 58 FR at 37307; *French Plate*, 64 FR at 73282; *French Stainless*, 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France*, 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we determine that a countervailable benefit exists in the amount of the equity infusions in accordance with section 771(5)(E)(i) of the Act. In this investigation, because the 1986 conversion has already been fully allocated over the AUL prior to the POI, only the 1988 equity infusions continue to provide a benefit in the POI.

We have treated the 1988 equity infusion as a non-recurring subsidy pursuant to 19 CFR 351.507(c). Because Usinor was uncreditworthy in 1988 (see section above on ''Subsidies Valuation Information: Equityworthiness and Creditworthiness''), we used an uncreditworthy discount rate to allocate the benefit of the equity infusion.

In *French Plate*, we attributed separately to Usinor and GTS Industries S.A. (''GTS'') their relative portions of the benefits from the equity infusion. 64 FR at 73282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination. To calculate the benefit attributable to GTS, we first divided GTS's sales in 1995 (the year prior to which Usinor ownership fell below 50 percent) by Usinor's consolidated sales of French produced merchandise in 1995. We then multiplied this ratio by Usinor's percentage ownership in GTS in 1996. The resulting percentage was multiplied by the total 1988 equity infusion to determine the benefit to GTS. The remaining amount of the equity infusion was attributed to Usinor.

Dividing the allocated benefit to Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI, we preliminarily determine Usinor's net subsidy rate for this program to be 1.13 percent *ad valorem*.

B. Investment/Operating Subsidies

During the period 1987 through the POI, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community (''ECSC''). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Plate* and *French Stainless*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See* 64 FR at 73282; 64 FR at 30779 and 30782. Therefore, consistent with these previous cases, we have not investigated these programs in this proceeding.

For the remaining programs, the GOF did not answer our questions regarding the distribution of funds, stating instead that, in the GOF's view, these ''question[s are] not readily answerable given the multiplicity of programs involved.'' As noted earlier, the GOF never why it would not be possible to provide the requested information. It also never asked the Department for an extension of time in which it could successfully research and retrieve the requested information. Instead, the GOF basically informed the Department that because the information was not ''readily answerable,'' it would not answer our request. We, therefore, do not believe that the GOF acted to the best of its ability when it refused to provide the requested information.

Accordingly, the Department has drawn an adverse inference (as done in *French Plate*, 64 FR at 73282 and *French Stainless*, 64 FR at 30779) by concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act. *See* section above on ''Use of Facts Available.''

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit as described in 771(5)(E)(i). Accordingly, we find this program to be countervailable.

The investment and operating subsidies provided in years prior to 1999 were already determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year and expensed in the relevant year of receipt (*see French Plate*, 64 FR at 73283 and *French Stainless*, 64 FR at 30780). Therefore, because it is not possible for these subsidies to benefit Usinor in the POI, we have not further examined them. The amount of investment and operating subsidies in 1999 was also less than 0.5 percent of Usinor's sales of French-produced merchandise in 1999. Therefore, this benefit was also expensed in the years of receipt (1999), in accordance with 19 CFR 351.524(b)(2).

To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we preliminarily determine Usinor's net subsidy rate for this program to be 0.19 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Shareholder Advances After 1986

According to Usinor's 1991 financial statements, the funds in the shareholder advances account were the funds provided by the GOF under the Societes de Developpement Industriel (''SODI'') program. Because we preliminarily find the funds received under the SODI program to not be countervailable (see discussion below), these advances are likewise not countervailable. However, at verification, we intend to examine the source of the funds in the shareholder advances account to determine if these funds are indeed SODI funds.

B. GOF Advances for SODIs

In *French Certain Steel*, we investigated advances made to SODIs prior to 1991 and found them not countervailable. 58 FR at 37310–11. In *French Plate*, we initiated an investigation of SODI advances after 1991. 64 FR at 73295. The information submitted by the petitioners in French Plate in support of investigating the advances to SODIs after 1991 was 1) an apparent discrepancy between the funding received from the GOF by Usinor and the funds ultimately loaned out by Usinor to the SODIs, and 2) the notification of the SODI program by the EU to the WTO. In *French Plate*, we did not make a final determination as to this program's countervailability because the allegation was not initiated upon in time to solicit adequate, verified information from all of the necessary respondents. *Id.*

In response to our questionnaires in this proceeding, Usinor has provided the amounts it received from the GOF and the amounts Usinor loaned to the SODIs. While the amounts received from the GOF do not match exactly the amounts loaned out by Usinor in any given year, over the entire period in which Usinor was receiving funds from the GOF, it did loan out all the funds it received from the GOF. Therefore, after 1991, the program continued to operate as it did prior to 1991. Consequently, for the reasons articulated in *French Certain Steel,* we preliminarily determine that the post-1991 SODI advances do not confer a countervailable subsidy on Usinor.

Moreover, a notification of a program to the WTO is not, in and of itself, a sufficient basis to find the program countervailable. In this respect, we note, but do not rely on, Article 25.7 of the Agreement on Subsidies and Countervailing Measures, which states that notification of a measure does not prejudge either the measure's legal status or the nature of the measure. Thus, while notification of a program to the WTO may have warranted investigation of the measure, based on our investigation of the program, we have found that it is not a countervailable subsidy.

In the petition, the petitioners have alleged that the GOF funds were compensation for SODI expenses, and raised questions about the recording of SODI funds in Usinor's accounting records, whether and how repayments of loaned funds by the SODIs to Usinor were made, whether and how repayments of SODI advances by Usinor to the GOF were made, and Usinor's handling of any surplus funds. We intend to seek further information regarding these issues for our final determination.

C. Funding for Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric arc furnaces. The first disbursal of funds occurred on July 22, 1998, and the second on August 31, 1999.

We preliminarily find that this program provides a financial contribution because it is a direct transfer of funds, as described in section 771(5)(D)(i) of the Act. Regarding specificity, the GOF stated that, in 1997, FF 2 billion of assistance was provided to 190 projects under the general Grands Projects Innovants (''GPI'') program, and that only three of the 39 projects selected in 1997 were in the raw materials sector (the sector that includes steel).

We preliminarily determine that the information reported by the GOF does not provide a basis for finding benefits under this program to be non-specific. First, Usinor's project was approved in 1996. However, the data provided by the GOF addresses 1997. Second, there is no information regarding the amount of benefits received by the companies in the raw material sector. Stating that it does not collect such information, the GOF did not provide the Department with any information indicating the actual distribution of benefits by company or by industry.

Regarding the benefit provided by this assistance, Usinor states that the amount of the advances is so small that any benefit would be virtually immeasurable.

Based upon our review of the amounts, we agree with Usinor that if we treated the disbursements as grants in the year they were received, the benefits would be expensed prior to the POI. Alternatively, if we treated the reimbursable advances as short-term, zero interest contingent liabilities, consistent with 19 CFR 351.505(d)(i), the benefit to Usinor in the POI is 0.00 percent *ad valorem*. Therefore, we find no countervailable subsidy under this program.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program. Should Usinor receive additional funding under this program in the future, we will re-examine the program's countervailability at that time.

D. Funding for Myosotis Project

Since 1988, Usinor has been developing a continuous thin-strip casting process, called ''Myosotis,'' in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist in this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maitrise de L'énergie (''AFME''), entered into three agreements with Usinor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments, one in 1989, one in 1991, and one in 1993. The second agreement, between Ugine and the AFME, covered the cost of some equipment for the project. This second agreement resulted in two disbursements to Ugine from the AFME, one in 1991 and one in 1992. The third agreement, with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance was due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Plate* and *French Stainless,* we found these grants and advances to be countervailable. 64 FR at 73283 and 64 FR at 30780. However, the grants under the 1989 and 1991 agreements were found to be less than 0.5 percent of sales in the year of receipt and, therefore, expensed in the year of receipt. *Id.* Therefore, because it is not possible for these grants to benefit Usinor in the POI, we have not examined them further. The 1997 advance, however, was treated as a short-term interest-free loan in *French Plate* and *French Stainless. Id.*

The 1995 agreement for the reimbursable advance was made between the GOF and Ugine (a Usinor subsidiary which does not produce subject merchandise). However, in its supplemental questionnaire response, Usinor acknowledged that the technology being developed with these funds would also benefit carbon steel flat products (which includes subject merchandise). See Usinor Supplemental Questionnaire Response, dated January 16, 2002, at 12. Consequently, we have analyzed these reimbursable grants in this investigation.

We preliminarily find the reimbursable advance is a financial contribution, as described in section 771(5)(D)(i) of the Act. Regarding specificity, for the reasons described above regarding assistance for Usinor's development of an electric arc furnace, the information provided by the GOF does not provide a basis for finding this program non-specific. Regarding the benefit of the Myosotis assistance, Usinor has argued that the amount of the reimbursable advances is so small that any possible benefit would be immeasurable.

We agree with Usinor. If we treat the entire amount of the reimbursable advance received in 1997 as a grant in that year, the benefit would be less than 0.5% of total sales in that year, and would, thus, be expensed prior to the POI.

Alternatively, we could measure the benefit by treating a portion of the reimbursable advance as a grant and the remainder as a zero-interest contingent liability. According to Article 7a of the Myosotis Agreement (*see* GOF December 21, 2001 Questionnaire Response, at Exhibit 10, p. 5), and as stated above, Usinor was required to reimburse a portion of the advance on July 31, 1999 and the remainder on July 31, 2001. Article 7a additionally states that ''[t]he portion of the advance which may not have been reimbursed pursuant to [this agreement] shall acquire the status of a subsidy. [T]he Beneficiary shall retain possession of this amount.'' Usinor has stated that it made only one payment thus far, in September 2001 (after the POI).

In light of this, the amount that was due on July 31, 1999, could be viewed as a grant received at the time the repayment was due. Dividing this grant by Usinor's sales in 1999, the benefit is less than 0.5 percent of sales in 1999, and, hence, would be expensed prior to the POI. The amount that was due on July 31, 2001, however, pursuant to 19 CFR 351.505(d)(1), and consistent with *French Plate*, is being treated as a short-term, zero-interest contingent liability loan.

Treating the portion to be reimbursed on July 31, 2001, as a zero-interest contingent liability, we multiplied the amount outstanding by the short-term interest rate described in the section above ''Subsidies Valuation Information: Benchmarks for Loans and Discount Rates.'' Since Usinor would have been required to make an interest payment on a comparable commercial loan during the POI, we calculated the benefit as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, the benefit to Usinor in the POI is 0.00 percent *ad valorem*. Therefore, we find no countervailable subsidy under this program.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program. Should Usinor receive additional funding under this program in the future, we will re-examine the program's countervailability at that time.

E. ECSC Article 56 Funding

According to the petitioners, ECSC Article 56 funds are targeted to promote employment and economic revitalization in regions of declining steel activity. Both steel-related and non-steel-related industries are eligible for assistance. Conversion loans are provided at reduced rates of interest and may be granted directly to companies or as global loans to financial institutions which then issue sub-loans to individual companies. Borrowers may also qualify for interest subsidies on all or part of a conversion loan, contingent upon the geographic location of the recipient or on the recipient agreeing that some percentage of the new jobs created will be reserved primarily for unemployed steel workers.

The EC states that Usinor did not benefit from this program because it merely acts as a conduit in advancing ECSC Article 56 funds to SODIs which, in turn, re-loan the funds to small- and medium-sized businesses.

We preliminarily find that, because Usinor was acting only as a conduit for Article 56(2)(a) funds for the benefit of third-party companies, Usinor receives no benefit under this program and, hence, no countervailable subsidy.

However, it is not clear at this stage how Usinor handles the repayment of loan funds from loan recipients (*i.e.,* what are the repayment terms, what does Usinor do with the repaid funds, and what are the repayment terms with the government). We intend to seek further information regarding these issues for our final determination.

F. 1995 Capital Increase

The petitioners have alleged that, by authorizing a capital increase of FF 5 billion at the time of Usinor's 1995 privatization, the GOF conferred a benefit upon Usinor in the amount of the increased capital. Specifically, they argue that the GOF ''directed or entrusted'' private entities to infuse capital into Usinor.

As an initial matter, we note that the arguments set forth by the petitioners may constitute a subsidy allegation made in untimely manner. According to 19 CFR 351.301(d)(4)(i)(A) of the Department's regulations, a subsidy allegation in an investigation is due no later than 40 days before the scheduled date of the preliminary determination. The record shows that the first instance on which the petitioners presented this particular argument was a submission dated February 19, 2002, merely seven days before the scheduled date of the preliminary determination (February 25, 2001). We note that their allegation does not rely on any new information developed in the course of this investigation. Nor did the alleged changes in the Department's practice occur after the filing of the petition. Nevertheless, in light of the obligation under section 775 of the Act to investigate potential subsidies discovered in the course of an investigation, we have reviewed the evidence on the record of this proceeding regarding the new shares issued by Usinor in connection with its privatization.

The capital increase identified by the petitioners was previously examined in *French Stainless* and *French Plate.* In those proceedings, we determined that the GOF did not forego any revenue by authorizing this capital increase. 64 FR at 30787. We also stated that we did not reach the issue of whether private investors were ''entrusted'' to provide a subsidy because we found that no subsidy existed. *Id.* Therefore, we found that no countervailable subsidy was conferred by this capital increase.

The petitioners in this proceeding have asked the Department to analyze this capital increase again based on their allegation that Usinor was unequityworthy at the time of the capital increase. The petitioners also point to developments in the Department's practice since *French Stainless* and *French Plate*, the Department's treatment of committed investments, and 19 CFR 351.507(a)(4)(i) and (ii).

Regarding the petitioners' claim that Usinor was unequityworthy in 1995, the petitioners have cited the company's poor performance in the years proceeding the privatization. Under 19 CFR 351.507(a)(4)(i)(B), we consider past indicators of performance, but we also consider, under 19 CFR 351.507(a)(4)(i)(D), equity investments by private investors. Given that 75 percent of Usinor's shares previously owned by the government were purchased by private investors in the 1995 privatization, we believe that investment in the company was consistent with the practice of private investors (*see* section 771(5)(E)(i) of the Act).

Regarding the petitioners' reference to changes in the Department's practice, we do not believe the two precedents cited by the petitioners (*Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review*, 66 FR 14549 (March 13, 2001) and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 37007 (July 16, 2001)) lead us to view this transaction differently. As noted above, we found no revenue forgone as a result of this capital increase. Also, because Usinor was equityworthy at the time, private investors have not been entrusted or directed to provide a subsidy. Finally, 19 CFR 351.507(a)(4)(ii) addresses situations where a government did not preform a study prior to an investment. In this instance, the investors are private entities.

Based on the above, we preliminarily do not find this allegation to be a basis for finding a subsidy.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. Repayable Grant to Sollac for ''Pre-Coating'' Technology

Usinor claims that, while Sollac was approved for funding under this program, no funds have yet been disbursed. Therefore, there is no benefit during the POI.

B. Tax Subsidies Under Article 39

C. ESF Grants

While the Department normally treats benefits from worker training programs to be recurring (*see* 19 CFR 351.524(c)(1)), we have found in several cases that European Social Fund (''ESF'') grants relate to specific, individual projects that require separate approval. *See, e.g., French Stainless* at 30781.

Usinor records ESF benefits as investment/operating subsidies. Because we find, for 1999, that these subsidies were less than 0.5 percent of Usinor's total sales of French produced merchandise in 1999, any benefits in 1999 would have been expensed in 1999. In addition, for the POI, Usinor claims it did not receive any benefits under the ESF program.

D. ECSC Article 54 Loans

E. ERDF Funding

F. Funding Under Resider and Resider II

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net subsidy rate (percent)
Usinor	1.32
All Others	1.32

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A), we have set the ''all others'' rate as Usinor's rate, because it is the only company which was individually investigated.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from France for exports which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and

will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5105 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817]

Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers or exporters of certain cold-rolled carbon steel flat products from Argentina.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Jarrod Goldfeder at (202) 482–0176 or (202) 482–0189, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Determination

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are to our regulations as codified at 19 CFR part 351 (2001).

The Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Co., Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001) (''*Initiation Notice*'')).

On November 2, 2001, we issued a countervailing duty questionnaire to the Government of Argentina (''GOA'') and Siderar Sociedad Anonima Industrial Y Comercial (''Siderar''), a producer/exporter of the subject merchandise from Argentina. Our decision to select Siderar to respond to our questionnaire is explained in the Memorandum to Susan H. Kuhbach, ''Respondent Selection,'' dated November 2, 2001, which is on file in the Central Records Unit, room B–099 of the main Department building.

On November 30, 2001, we extended the time limit for the preliminary determination of this investigation to January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001).

On November 15, 2001, Emerson Electric Co. submitted a request to exclude certain merchandise from the scope of this investigation. On February 22, 2002, the petitioners submitted an objection to this request. *See* section below on ''Scope of the Investigation: Scope Comments'' for an analysis of these submissions and the Department's determination.

We received a questionnaire response from the GOA and Siderar on December 21, 2001. The petitioners submitted comments regarding these questionnaire responses on January 2, 2002.

We issued supplemental questionnaires to the GOA and Siderar on January 22, 2002, and received responses to these questionnaires on February 6, 2002.

On January 18, 2002, we further extended the time limit for the preliminary determination in this investigation until February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 67 FR 3482 (January 24, 2002).

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, see the Appendix to this notice.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully- or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

Injury Test

Because Argentina is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding that there is a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of certain cold-rolled carbon steel flat products from Argentina. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden,*

Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations (*see Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001)). The companion antidumping duty investigations and this countervailing duty investigation were initiated on the same date and have the same scope. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigations of certain cold-rolled carbon steel flat products.

Period of Investigation

The period of investigation (''POI'') for which we are measuring subsidies corresponds to Siderar's fiscal year, July 1, 2000 through June 30, 2001.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For certain cold-rolled carbon steel flat products, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Siderar has calculated a company-specific AUL of 8 years. We preliminarily determine that this AUL is not distortive and that it is significantly different from the 15-year AUL prescribed by the IRS Tables. Therefore, we are using this AUL to identify those subsidies that potentially give rise to a countervailable benefit during the POI.

We note that subsidies to Siderar's predecessors (Sociedad Mixta Siderugica (SOMISA) and Propulsora Siderugica S.A.I.C (Propulsora)) were previously allocated over 15 years. *See Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Results of Countervailing Duty Administrative Review,* 62 FR 52974 (October 10, 1997). We note further that subsidies to Siderar were allocated over 15 years in *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 37007 (July 16, 2001). In both cases, to allocate subsidies, the Department used the 15-year AUL prescribed by the IRS Tables. At the time of the former case, however, it was not the Department's policy to permit companies to request a company-specific allocation period; and the latter case was decided on the basis of adverse facts available.

Because the 8-year company-specific AUL calculated by Siderar was calculated pursuant to 19 CFR 351.524(d)(iii)) and is significantly different from the AUL prescribed by the IRS Tables (as defined in 19 CFR 351.524(d)(ii)), the Departments regulation at 19 CFR 351.524(d)(i) directs that we use it. The use of this 8-year company-specific AUL means that all benefits received prior to Siderar's 1993 fiscal year provided no benefit to Siderar in the POI. Accordingly, in this preliminary determination, we have not discussed the merits of any arguments relating to any alleged subsidies received prior Siderar's 1993/1994 fiscal year.

Equityworthiness and Creditworthiness

The petitioners claim that SOMISA was unequityworthy from 1984 through 1990. In the *Initiation Notice,* we stated that we would examine the equityworthiness of SOMISA during this period should we find any countervailable equity infusions received in those years. 66 FR at 54226. However, because of the use of Siderar's 8-year, company-specific AUL, any non-recurring subsidies received in the years of alleged unequityworthiness would be fully allocated prior to the POI. Accordingly, because Siderar would not benefit in the POI from any equity infusions received in 1986 through 1990, there is no need to examine its equityworthiness for the that period.

The petitioners also alleged that Siderar was uncreditworthy during 1992. We stated in the *Initiation Notice* that we would examine Siderar's creditworthiness in 1992 if we found that SOMISA received any non-recurring grants, loans, or loan guarantees in 1992. *Id.* However, because of our decision to use Siderar's 8-year, company-specific AUL, any non-recurring subsidies received in 1992 would be fully allocated prior to the POI. In addition, no countervailable loans or loan guarantees were received in 1992. Accordingly, because Siderar did not benefit in the POI from any countervailable non-recurring grants, loans or loan guarantees received in 1992, there is no need to examine its creditworthiness for that year.

I. Programs Preliminarily Determined To Be Countervailable

A. Zero Tariff Turnkey Bill

The Zero Tariff Turnkey Bill is a program established by Resolution 502/95 of the Ministry of Economy. The purpose of the program is to provide an incentive to import goods and equipment that will be used to modernize productive processes in Argentina. The program achieves this objective by allowing for the importation of new merchandise and equipment without the payment of import duties. Resolution 502/95 was repealed in 2000 and replaced with a modified version established by Resolution 1089/00.

In the original questionnaire and in a supplemental questionnaire, we asked the GOA to provide information regarding the distribution of benefits among industries and companies for the year the benefit was approved and for the prior three years. The GOA provided us in both responses with what appears to be the distribution of benefits for the years 1996/1997 only. Although this information indicates that the program is not specific, the GOA did not claim that it could not provide more recent data. Therefore, because it is unclear at this stage whether the provided data provided by the GOA is the relevant data, for specificity purposes, we have preliminarily made an assumption that the benefits are *de facto* specific. We intend to clarify prior to the final determination the specificity of this program during the POI. We note, however, that, despite this assumption of specificity, the benefits from the program to Siderar for the POI are

insignificant, amounting to only 0.01 percent *ad valorem.*

Because this program provides a duty exemption, we have preliminarily found the benefit as recurring, pursuant to 19 CFR 351.524(a) and (c). Prior to the final determination, we intend to clarify whether these benefits are tied to capital assets and consider whether they should be treated as non-recurring.

To calculate the subsidy rate, we multiplied the value of the imported goods by the applicable duty rate. Because this entire amount was rebated, we treated the entire amount as a benefit in the POI. We divided this benefit by Siderar's total sales in the POI. Accordingly, we preliminarily determine Siderar's POI benefit from this program to be 0.01 percent *ad valorem.*

II. Programs Preliminarily Determined To Be Not Countervailable

A. ''Committed Investment'' Into APSA

According to the petitioners, at the time of APSA's privatization in 1992, the GOA required all bidders to commit to invest $100 million in equity into APSA during the two years following the company's sale. The petitioners allege that the GOA sold APSA at a price that was below fair market value, thereby inducing Propulsura, the eventual purchaser, to agree to the investment commitment. The petitioners argue that the investment commitment constituted an indirect equity infusion in which the GOA ''directed or entrusted'' Propulsura to make an infusion in APSA, an unequityworthy company. The petitioners suggest two ways to address the committed investment required by the GOA: 1) as revenue forgone and 2) as an equity infusion ''directed'' by the GOA.

Regarding the first approach, the petitioners rely upon the Department's finding in *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review,* 66 FR 14549 (March 13, 2001) and accompanying *Issues and Decision Memorandum,* at Discussion of Analysis of Programs: Committed Investment (''*Mexican Plate*''). In *Mexican Plate,* we found that the government of Mexico forwent revenue owed to it when it allowed the bidders to use a commitment to invest in the company in the future as a partial equivalent to the payment of cash for the company at the time of sale.

In *Mexican Plate,* the benefit occurred at the time that revenue was forgone by the government, *i.e.,* at the time the company was sold. In this case, any revenue forgone from the committed investment would have taken place at the time of the sale of the company, which was in 1992. As stated above, however, because of the use of Siderar's 8-year company-specific AUL in this investigation, any benefits received in 1992 would be fully allocated prior to the POI. Therefore, we have not made a determination of whether the GOA actually forwent revenue because, regardless of whether it did, Siderar did not benefit in the POI.

The second approach advocated by the petitioners is based on our treatment of the committed investment in *Argentina Hot-Rolled.* In that case, we treated the same committed investment that is under investigation in this case as non-recurring grants received in the years in which the investments were made. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 66 FR 109901, 10997 (February 21, 2001). That decision, however, was made on the basis of adverse facts available, and the methodology used in that case for the treatment of the committed investment reflected an adverse inference by the Department.

We believe that the revenue forgone analysis performed in *Mexican Plate* is the appropriate examination to be used in the case of committed investments. However, because the petitioners have, in part, relied on *Argentina Hot-Rolled* in making their allegations, we have examined the merits of this allegation in light of *Argentina Hot-Rolled.* We note several problems with the petitioners' second approach. First, unlike in *Argentina Hot-Rolled,* the GOA and Siderar have cooperated fully in this investigation and, therefore, our determination in *Argentina Hot-Rolled* is not instructive. Second, an examination of the evidence placed on the record of this investigation in light of the approach used in *Argentina Hot-Rolled* reveals significant issues with regard to the specificity of any benefits and the nature of the financial contribution. Finally, even assuming *arguendo* that these investments were countervailable, the resulting subsidy rate would be small enough that it does not raise the overall subsidy rate above *de minimis.* As a result, because the countervailability of this program does not make a difference in the outcome of this preliminary determination, we find that no further examination of this approach is needed. *Based on all of the above, we find this program not countervailable.*

B. Export Subsidies: Reintegro

The Reintegro program entitles Argentine exporters to a rebate of various internal and domestic taxes levied during the production, distribution, and sales process on many exported products. The Reintegro is calculated as a percentage of the FOB invoice price of an exported product. *See, e.g., Final Affirmative Countervailing Duty Determination: Honey from Argentina,* 66 FR 50613 (October 4, 2001), and accompanying *Issues and Decision Memorandum* at ''Programs Determined to Confer Subsidies: Federal Programs—Argentine Internal Tax Reimbursement/Rebate (Reintegro)'' (''*Honey Final*'').

In order to determine whether a countervailable benefit is provided by programs that rebate cumulative indirect taxes, the Department normally examines whether the amount remitted or rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs consumed in the production of subject merchandise, making normal allowances for waste. 19 CFR 351.518(a)(2). If the amount rebated exceeds the amount of prior-stage cumulative indirect taxes paid, the excess amount is a countervailable benefit. *Id.*

However, 19 CFR 351.518(a)(4) states that the Department will consider the entire amount of the tax rebate or remission to confer a benefit unless:

> 1. The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or
>
> 2. If the government in question does not have a system or procedures in place, if the system is or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

19 CFR 351.518 (a)(4)(i) and (ii).

According to the GOA, the government has no written procedures or guidelines for the operation of this rebate system. However, the GOA claims that it does receive information from the industry regarding the actual incidence of indirect taxes, which it takes into account in setting the

Reintegro rate. These rates are adjusted from time to time at the discretion of the Ministry of Economy.

The Department has previously examined the Reembolso, the predecessor to the Reintegro. In the most recent examination, *Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination on Honey from the People's Republic of China,* 66 FR 14521, 14524 (March 13, 2001), we stated that:

> [T]he GOA established a rebate system in 1971, which was known as the ''reembolso'' program. In 1986, Decree 1555/86 was promulgated to implement the reembolso program in a manner consistent with the General Agreement on Tariffs and Trade. In May 1991, the GOA issued Decree 1011/91, which renamed the reembolso program as Reintegro and modified the legal structure of the program. Under Decree 1011/91, Reintegro rebated indirect taxes only. Decree 1011/91 has been the relevant governing decree since 1991. The nature and structure of the program have remained unchanged since then, although the Ministry of Economics modifies Reintegro rebate levels from time to time.

Moreover, in *Preliminary Results of Full Sunset Review, Carbon Steel Wire Rod From Argentina,* 64 FR 28978 (May 28, 1999), we stated that:

> [W]e found that the legal structure of the reembolso program was changed by Decree 1011/91 in May 1991. Specifically, the Department found that the rebate system was changed to cover only the reimbursements of the indirect local taxes and does not cover import duties, except reimbursement of duties paid on imported products which are re-exported.

In *Honey Final,* we found that the Reintegro program provides a countervailable benefit in the full amount of the Reintgro rebate because the GOA was unable to demonstrate that it had a reasonable and effective system in place for its honey industry. However, while this was true for the honey industry, because systems or procedures may differ from industry to industry, we have examined the system or procedure in place for the steel industry.

In previous steel cases, the Department determined that, for the steel industry, the GOA carries out an appropriate examination of actual inputs to confirm which inputs are consumed in the production of the exported products. *See, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 49 FR 18006, 18009–10 (April 26, 1984) (and its subsequent reviews) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Oil Country Tubular Goods From Argentina,* 49 FR 46564, 46566 (November 27, 1984) (and its subsequent reviews).

In this case, Siderar claims that it submits its tax incidence study to the GOA on a regular basis (and provided to the Department, in this investigation, its studies for the fiscal years 1998/1999 and 2000/2001). Because the GOA has used these studies in its determination of the Reintgro rate (which are similar to the studies examined by the GOA in previous cases) and regularly updates these rates, we continue to find, consistent with our past cases, that the GOA has appropriately examined the actual inputs involved in the production of the subject merchandise.

Because of the above, and pursuant to 19 CFR 351.518(a)(2), we then examined the extent to which Siderar received rebates in excess of its prior-stage cumulative indirect taxes on the production of subject merchandise. According to the GOA, the Reintgro rate applicable for subject merchandise for the POI was 7.5 percent (except for a brief period in which it was reduced to 0.5 percent). Based on our calculation methodology from previous cases, we examined Siderar's 2000/2001 tax incidence study and found that the company's actual POI prior-stage cumulative indirect taxes for the production of the subject merchandise exceeded 7.5 percent. Because Siderar's actual incidence of tax was higher than the Reintegro rate, we find no countervailable benefit to Siderar in the POI. Accordingly, we preliminarily find this program not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses and/or the use of Siderar's 8-year company-specific AUL, we determine that Siderar did not receive benefits under the following programs during the POI:

A. Equity Infusions

B. Assumption of Debt and Liquidation Costs

C. Subsidies Under Decree 1144/92

D. Export Subsidies: Pre- and Post-Export Financing

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary

version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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APPENDIX

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States ("HTSUS"), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold- rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

Chemical Composition

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

Chemical Composition

Element	C	Si	Mn	P	S
Weight %	0.90-1.05	0.15-0.35	0.30-0.50	≤0.03	≤0.006

Mechanical Properties

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥475 Vickers hardness number

Physical Properties

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

Non-metallic Inclusion

	Area Percentage
Sulfide Inclusion	≤0.04 %
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

Surface Roughness

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤0.100 mm ±7%
  Width: 100 to 600 mm

Chemical Composition

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2-0.5	≤0.05	≤0.05	≤0.07	Balance

Mechanical Properties

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

Physical Properties

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm.

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inch ±.0015 inch
  Width: 33 to 45.5 inches

Chemical Composition

Element.....	C	Mn	P	S	Si	Al
Min. Weight %.....					0.65	
Max. Weight %.....	0.004	0.4	0.09	0.009		0.4

Mechanical Properties

Hardness.....	B 60-75 (AIM 65)

Physical Properties

Finish.....	Smooth (30-60 microinches)
Gamma Crown (in 5 inches).....	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I-UNIT max
Coating.....	C3A-.08A max. (A2 coating acceptable)
Camber (in any 10 feet).....	1/16 inch
Coil Size I.D.	20 inches

Magnetic Properties

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max
Permeability (1.5T/60 Hz) NAAS.....	1700 gauss/oersted typical
	1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
  Thickness: 0.025 to 0.245 mm
  Width: 381-1000 mm

Chemical Composition

Element.....	C	N	Al
Weight %.....	<0.01	0.004 to 0.007	<0.007

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

Chemical Composition

Element.....	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %...	0.02	0.20				0.03				0.003
Max. Weight %..	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

Surface Finish

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

- Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/-10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000-55,000 psi
Elongation	minimum of 15 percent in 2 inches

- Concast cold-rolled drawing quality sheet steel, ASTM a-620-97, Type B, or single reduced black plate, ASTM A-625-92, Type D, T-1, ASTM A-625-76 and ASTM A-366-96, T1-T2-T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
- Certain single reduced black plate, meeting ASTM A-625-98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T-2 (49-57 hardness using the Rockwell 30 T scale).
- Certain single reduced black plate, meeting ASTM A-625-76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
- Certain single reduced black plate, meeting ASTM A-625-98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T-3 (53-61 hardness using the Rockwell 30 T scale).
- Certain cold-rolled black plate bare steel strip, meeting ASTM A-625 specifications, which meet the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50-60 aiming
Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

- Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A-623, Table II, Type MR specifications, which meet the following characteristics:

Chemical Composition

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

Physical and Mechanical Properties

Thickness	0.0060 inch (±0.0005 inch)
Width	10 inches (+ ¼ to ⅜ inch/-0)
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

- Certain "blued steel" coil (also know as "steamed blue steel" or "blue oxide") with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
- Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:
  Thickness (nominal): ≤0.019 inch
  Width: 35 to 60 inches

Chemical Composition

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

- Certain cold-rolled steel, which meets the following characteristics:
  Width: >66 inches

Chemical Composition

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

Physical and Mechanical Properties

Thickness Range (mm)	0.800-2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

Chemical Composition

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

- Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

Physical and Mechanical Properties

Thickness Range (mm)	1.000-2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000-1.199 thickness range) 25 (if 1.200-1.599 thickness range)

	26 (if 1.600-1.999 thickness range) 27 (if 2.000-2.300 thickness range)

Variety 2

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

Physical and Mechanical Properties

Thickness Range (mm)	1.000-2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000-1.199 thickness range) 22 (if 1.200-1.599 thickness range) 23 (if 1.600-1.999 thickness range) 24 (if 2.000-2.300 thickness range)

Variety 3

Chemical Composition

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

Physical and Mechanical Properties

Thickness Range (mm)	1.200-2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200-1.599 thickness range) 19 (if 1.600-1.999 thickness range) 20 (if 2.000-2.300 thickness range)

- Certain cold-rolled steel, which meets the following characteristics:

Variety 1 :

Chemical Composition

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

Physical and Mechanical Properties

Thickness Range (mm)	0.600-0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2 :

Chemical Composition

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

Physical and Mechanical Properties

Thickness Range (mm)	0.800-1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3 :

Chemical Composition

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15-.35	0.35	0.10	0.10	0.30

Physical and Mechanical Properties

Thickness (mm):	0.7
Elongation %: ≥	35

- Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A-424-96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings:

7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("U.S. Customs") purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 02–5106 Filed 3–1–02; 8:45 am]
BILLING CODE 3510–DS–C

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–849]

Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl at (202) 482–1767 and Darla Brown at (202) 482–2849, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

PRELIMINARY DETERMINATION The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cold-rolled carbon steel flat products (subject merchandise) from the Republic of Korea. For information on the estimated countervailing duty rates, *see* the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corp., United States Steel LLC, LTV Steel Company, Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp (collectively, petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea*, 66 FR 54218 (October 26, 2001) (*Initiation Notice*)), the following events have occurred. On November 1, 2001, we issued countervailing duty questionnaires to the Government of Korea (GOK).[1] On December 20, 2001, we received responses to our initial questionnaires from the GOK, Dongbu Steel Co., Ltd. (Dongbu), Hyundai Hysco (Hysco), and Pohang Iron & Steel Co., Ltd.[2] (POSCO) (collectively, respondents), the producers/exporters of the subject merchandise. On January 16, 2002, the Department initiated an investigation of two additional subsidy allegations made by petitioners. *See* Memorandum to Melissa G. Skinner, Director of Office of AD/CVD Enforcement VI, through Richard Herring, Program Manager of Office of AD/CVD Enforcement VI; Re: Additional Subsidy Allegations in the Investigation of Certain Cold-Rolled Steel Flat Products from Korea dated January 16, 2002, which is on public file in the Central Records Unit (CRU), Room B–099 of the Department of Commerce. Supplemental questionnaires were issued to the GOK, Dongbu, POSCO, and Hysco on January 16, 2002 and January 18, 2002. We received supplemental questionnaire responses from respondents on February 5, 2002.

On December 7, 2001, we issued a partial extension of the due date for this preliminary determination from December 22, 2001, to no later than January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 66 FR 63523 (December 7, 2001) (*Extension Notice*). On January 24, 2002, we amended the Extension Notice to take the full amount of time to issue this preliminary determination. The extended due date is February 25, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations*, 67 FR 3482 (*Second Extension Notice*).

The GOK's December 20, 2001 questionnaire response stated that Union Steel Manufacturing Co., Ltd. (Union) shipped subject merchandise to the United States during the POI; however, the GOK stated that Union would not be responding to the Department's questionnaire for this investigation. On January 16, 2002, we provided Union with another opportunity to respond to the questionnaire. Union, again, declined to participate in this investigation. For the treatment of Union in this preliminary determination, see the ''Use of Facts Available'' section of this notice.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrent with this preliminary determination.

Scope Comments

In the Initiation Notice, we invited comments on the scope of this proceeding. On November 15, 2001, we received a request from Emerson Electric Company (''Emerson'') to amend the scope of this investigation, as well as the concurrent countervailing and antidumping duty investigations pertaining to subject merchandise. Specifically, Emerson requested that the scope be amended to exclude all types of nonoriented coated silicon electrical steel, whether fully-or semi-processed, because such products are not treated in the marketplace as carbon steel products.

On February 22, 2002, we received a response to the Emerson request from the petitioners. The petitioners objected to excluding these products from the scope and have explained that the scope language is not overly inclusive with respect to these products. Therefore, we determine that nonoriented coated silicon electric steel is within the scope of these proceedings.

The Department has also received several other scope exclusion requests in the cold-rolled steel investigations. We are continuing to examine these exclusion requests, and plan to reach a decision as early as possible in the proceedings. Interested parties will be advised of our intentions prior to the final determinations and will have the opportunity to comment.

[1] Upon the issuance of the questionnaire, we informed the GOK that it was the government's responsibility to forward the questionnaires to all producers/exporters that shipped subject merchandise to the United States during the period of investigation.

[2] Pohang Coated Steel Co., Ltd. (POCOS), a wholly-owned subsidiary of POSCO which also produces and exports subject merchandise submitted a questionnnaire response. Because POCOS is a whollyu-owned subsidiary of POSCO, we have included the beneifts received by POCOS in our calculation of POSCO's rate and have used POSCO's consolidated sales as our denominator. Reference to POSCO throughout this notice will also include POCOS.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Injury Test

Because Korea is a ''Subsidy Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure or threaten material injury to a U.S. industry. On November 19, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of subject merchandise. (66 FR 57985). The views of the Commission are contained in the USITC Publication 3471 (November 2001), *Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*; Investigation Nos. 701–TA–422–425 (Preliminary) and 731–TA–964–983 (Preliminary).

Alignment With Final Antidumping Duty Determination

On February 21, 2002, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping duty investigations of cold-rolled carbon steel flat products.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2000.

Use of Facts Available

Union failed to respond to the Department's questionnaire. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act require the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Union failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Union failed to provide any requested information, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. In this investigation, the Department requested that all producers/exporters in Korea that shipped subject merchandise to the United States during the POI submit the information requested in our initial questionnaire. However, Union, a producer/exporter that shipped subject merchandise to the United States during the POI, did not participate in the investigation.

The Department finds that by not providing the necessary information specifically requested by the Department and by failing to participate in any respect in this investigation, Union has failed to cooperate to the best of its ability. Therefore, in selecting facts available, the Department determines that an adverse inference is warranted.

Section 776(b) of the Act indicates that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. *See* also 19 CFR § 351.308(c). As adverse facts available in this preliminary determination, we have calculated Union's net subsidy rate by using a subsidy rate from *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999), (*Sheet and Strip*), this rate was used as adverse facts available for a company in that final determination. Therefore, we preliminarily determine a total *ad valorem* rate of 7.00 percent as adverse facts available for Union. *See Sheet and Strip*, 64 FR 30638–39. We note that, in determining Union's adverse facts available rate, we did not include in our calculations any net subsidy rates stemming from programs that would not be available to Union. For example, there was a higher adverse facts available rate that was used in *Sheet and Strip*, however, a portion of that rate was based upon company-specific allegations, unique to a specific producer. We further note that none of the company-specific program rates used to derive the 7.00 percent net subsidy rate were determined on the basis of facts available.

Subsidies Valuation Information

Allocation Period: Under section 351.524(d)(2) of the CVD Regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, we will allocate non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-Terms Loans and Discount Rates: During the POI, respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. Some loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea,* and in *Structural Beams,* the Department determined that, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37338, 37339 (July 9, 1993) (*Steel Products from Korea*), and *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea,* 65 FR 41051

(July 3, 2000) (*Structural Beams*). In both investigations, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the preliminary determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530 (March 31, 1999) (*Plate in Coils*), *Sheet and Strip,* and in the Benchmark Interest Rates and Discount Rates section of the Issues and Decision Memorandum that accompanied *Structural Beams,* we examined the GOK's direction of credit policies for the period 1992 through 1998. Based on information gathered during the course of those investigations, the Department also determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1998. In the current investigation, based upon these earlier findings and updated information, we preliminarily determine that the GOK still exercised substantial control over lending institutions in Korea during the POI.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained since 1992, and which are still outstanding during the POI:

(1) For countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average foreign-denominated interest rates on the companies' loans from foreign bank branches in Korea. If such a benchmark was not available, then, as facts available, we had to rely on the lending rates as reported by the IMF's *International Financial Statistics Yearbook.* We will attempted to gather additional data on lending rate during verification.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' won denominated public and private bonds. We note that this benchmark is based on the decision in *Plate in Coils,* 64 FR 15530, 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year won-denominated corporate bonds as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils,* 64 FR 15530, 15532, in which we determined that, absent company-specific interest rate information, the won-denominated corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea.

We are also using, where available, the company-specific won-denominated corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 2000. Where unavailable, we are using the national average of the three-year Korean won corporate bond rate.

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term won-denominated interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POI.

Treatment of Subsidies Received by Trading Companies: We required responses from trading companies with respect to the export subsidies under investigation because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. *See* 19 CFR 351.525.

During the POI, Dongbu exported the subject merchandise to the United States through one trading company, Dongbu Corporation (Dongbu Corp). POSCO exported subject merchandise through two trading companies, Daewoo International Corporation (Daewoo) and POSCO Steel Service & Sales Co., Ltd. (Posteel). Dongbu Corp, Daewoo, and Posteel responded to the Department's questionnaires with respect to the export subsidies under investigation.

Under 19 CFR 351.107, when subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This preliminary determination is based on two main facts: first, the majority of subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon individual trading companies with regard to subject merchandise is insignificant. Thus, combination rates would serve no practical purpose because the calculated subsidy rate for any of the producers and a combination of any of the trading companies would effectively be the same rate. Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the trading companies, we calculated the benefit attributable to the subject merchandise. In each case, we determined the benefit received by the trading companies for each of the export subsidies, next we weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States to the relative share of direct exports of the producer of subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

I. Programs Preliminarily Determined To Be Countervailable

A. GOK Directed Credit

We determined in *Plate in Coils* that the provision of long-term loans via the GOK's direction of credit policies was specific to the Korean steel industry through 1991 within the meaning of section 771(5A)(D)(iii) of the Act, and resulted in a financial contribution, within the meaning of sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively.

In *Plate in Coils,* the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. In *CTL Plate,* the Department continued to find that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. In the final determination of *CTL Plate,* the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998. *See CTL Plate,* 64 FR at 73180. Further, the Department determined in this investigation that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans within the meaning of section 771(5)(E)(ii) of the Act. In *1999 Sheet and Strip,* we determined that the GOK continued to control credit through 1999. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*). Based upon the determinations in these cited cases, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable. In addition, we also continue to find access to offshore lending and credit sources countervailable.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies in 2000, the POI, which we would consider along with our finding in the prior investigations. We note that with respect to access to direct foreign loans (*i.e.,* loans from offshore banks) and the issuance of offshore foreign securities by Korean companies, the GOK has replaced the Foreign Investment and Foreign Capital Inducement Act, with the Foreign Investment Promotion Act. While this information indicates that the GOK is making strides in its reforms of the financial sector, at present, this additional information is not sufficient to warrant a reconsideration of our determination that the GOK has directed access to foreign credit to the Korean steel industry. During verification, we will closely examine this issue with respect to the 2000 period.

With respect to foreign sources of credit, in *Plate in Coils* and *Sheet and Strip,* we determined that access to foreign currency loans from Korean branches of foreign banks (*i.e.,* branches of U.S. and foreign-owned banks operating in Korea) did not confer a benefit to the recipient as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by the respondent from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in *Plate in Coils* and *Sheet and Strip,* we determined that respondent's loans from these banks could serve as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. As such, lending from this source is not countervailable, and, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

Dongbu, Hysco, and POSCO received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the POI. In order to determine whether these GOK-directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the ''Subsidies Valuation Information'' section of this notice.

For variable-rate loans the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, in these preliminary results, we have calculated the benefit from these loans using the Department's variable rate methodology. For fixed-rate loans, we calculated the benefit from these loans using the Department's fixed-rate methodology. Next we summed the benefit amounts from the loans and divided the total benefit by the respective company's total f.o.b. sales value during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.20 percent *ad valorem* for Dongbu, 0.24 percent *ad valorem* for Hysco, and 0.08 percent *ad valorem* for POSCO.

B. GOK Infrastructure Investment at Kwangyang Bay Through 1991

In *Steel Products from Korea,* the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea,* 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea,* which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. Using the 15 year allocation period, POSCO is still receiving benefits under this program from GOK investments made during the years 1986 through 1991. To calculate the benefit from these grants, we used as our discount rate the three-year corporate bond rate on the secondary market as used in *Steel Products from Korea.* We then summed the benefits received by POSCO during the POI from each of the GOK's yearly investments over the period 1986–1991. We then divided the total benefit attributable to the POI by POSCO's total f.o.b. sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.15 percent *ad valorem* for the POI.

C. Research and Development (R&D)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the Industrial Development Act (IDA), including technology for core materials, components, engineering systems, and resource technology. Petitioners also allege that R&D grants are provided to the steel industry through the Ministry of Science and Technology (MOST).

The IDA is designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) A company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of Small and Medium Enterprises (SME)'s established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount. In *CTL Plate,* we determined that this program is countervailable. *See CTL Plate,* 64 FR 73185. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine that this program is countervailable.

To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the amount of the grant by each company's respective total f.o.b. sales. Based upon this methodology, we preliminarily determine that POSCO received a countervailable subsidy of 0.08 percent ad valorem and that Dongbu received a countervailable subsidy of less than 0.005 percent ad valorem. Hysco did not use this program.

D. Provision of Land at Asan Bay

The GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by Koland.

In *CTL Plate,* we found that steel companies received price discounts on purchases of land at Asan Bay, and found this program countervailable. *See CTL Plate,* 64 FR 73184. In addition, we found that the GOK provided additional savings to the companies by exempting them from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land. Dongbu purchased land in the Kodai industrial estate at Asan Bay and received the tax exemptions on the purchase of this land at the industrial estate.

To determine Dongbu's benefit from this program, we compared the GOK's published list price for land at the Kodai industrial estate, which was 134,966 won per square meter, to the discounted price per square meter paid by Dongbu. We adjusted the list price to account for land development costs undertaken by the company, rather than the GOK. We made this deduction because the GOK's costs for land development is included in the published 134,966 per square meter price. We then calculated this price discount by the number of square meters purchased by Dongbu. In addition to this price discount, the GOK provided an adjustment to Dongbu's final payment to account for ''interest earned'' by the company for pre-payments. Companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. The GOK provided a financial contribution to Dongbu under section 771(5)(D)(i) of the Act when it refunded the interest earned on the advanced payments. This interest earned refund is specific to Dongbu under section 771(5A)(D)(iii)(I) of the Act, as being limited to Dongbu. Therefore, we find that this additional credit on the final payment made by the GOK to Dongbu also provides a countervailable benefit to the company. The land price discount and the interest earned refund are non-recurring subsidies.

Under section 351.524(b)(2) of the CVD Regulations, non-recurring benefits which are less than 0.5 percent of the company's relevant sales are expensed in the year of receipt. We performed the 0.5 percent test and we preliminarily find that the land price discount and the interest earned refund exceeded 0.5 percent of the sales for the respective year, therefore, to calculate the benefit conferred during the POI on the land price discount and the interest earned refund, we applied the Department's standard grant methodology and allocated the benefit provided by this program over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. We then divided the total benefit attributable to the POI by Dongbu's total f.o.b. sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.62 percent *ad valorem* for the POI.

With respect to the exemptions from the registration tax, education tax, and the acquisition tax which normally would be paid on purchases of land, we preliminarily determine that Dongbu did not receive a benefit from these tax exemptions during the POI. We make this determination because these tax exemptions were not received during the POI. Under section 351.509(b) of the CVD Regulations, the Department will normally consider that the benefit from a tax exemption is conferred in the year in which the exemption was received. We recognize that under certain circumstances, if a tax exemption is tied to capital goods, then the Department may consider the benefit from the tax exemption to be non-recurring. *See Countervailing Duties; Final Rule,* 63 FR 65384, 65393 (November 25, 1998). Non-recurring benefits are normally allocated over time. However, under section 351.524(b)(2), non-recurring subsidy benefits will be expensed in the year of receipt, if the total benefit from the subsidy program is less than 0.5 percent of a company's sales. Therefore, even if the tax exemptions received by Dongbu were considered to have provided non-recurring benefits because they were tied to the purchase of capital assets, these benefits would still have

been expensed before the POI because of the Department's 0.5 percent test.

E. POSCO's Exemption of Bond Requirement for Port Use at Asan Bay

As noted above, the GOK has developed industrial estates at Asan Bay. In *CTL Plate,* we determined that the GOK had built port berths #1, #2, #3, and #4 in the Poseung area. In September 1997, POSCO signed a three-year lease agreement with the Inchon Port Authority (IPA) for the exclusive use of port berth #1, which was constructed by the GOK. The GOK also entered into a lease agreement in 1997 for the exclusive use of port berths #2, #3, and #4, with a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1.

In *CTL Plate,* we found this program countervailable, see *CTL Plate,* 64 FR 73183–73184. We determined that the waiver of the bond purchase was only provided to POSCO, and was therefore specific under section 771(5A)(D) of the Act. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO conferred a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determined that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to find this program countervailable.

To determine the benefit from this program, we treated the amount of the bond waived as a long-term interest-free loan. We then applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations for a long-term fixed rate loan, and compared the amount of interest that should have been paid during the POI on the interest free loan to the amount of interest that would have been paid based upon the interest rate on a comparable won-denominated benchmark loan. We then divided the benefit by the company's total sales. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO.

F. Investment Tax Credits

Under Korean tax laws, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the Tax Reduction and Exemption Control Act (TERCL). On that date TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

During the POI, Dongbu earned or used the following tax credits for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA Article 11, previously TERCL Article 10); (2) Investments in Productivity Increasing Facilities (RSTA Article 24, previously TERCL Article 25); (3) Investments in Specific Facilities (RSTA Article 25, previously TERCL Article 26); and (4) Equipment Investment to Promote Worker's Welfare (RSTA Article 94, previously TERCL Article 88).

POSCO used the following tax credits during the POI for: (1) Investments in Equipment to Develop Technology and Manpower (RSTA 11); (2) Investments in Productivity Increasing Facilities (RSTA 24); and (3) Investments in Specific Facilities (RSTA 25).

Hysco had outstanding investment tax credits during the POI. However, due to the net tax loss for the income tax return filed during the POI, the company could not use and did not claim any investment tax credits during the POI.

If a company invested in foreign-produced facilities (*i.e.,* facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.,* facilities produced in Korea), it received a 10 percent tax credit. Under the tax credit for Equipment Investment to Promote Worker's Welfare, a tax credit could only be claimed if a company used domestic machines and materials. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act in *CTL Plate.* In addition, because the GOK forwent the collection of tax revenue otherwise due under this program, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable in *CTL Plate. See CTL Plate* at 73182.

According to the response of the GOK, changes have been made in the manner in which these investment tax credits are determined. Pursuant to amendments made to TERCL which occurred on April 10, 1998, the distinction between investments in domestic and imported goods was eliminated for the tax credits for Investments in Equipment to Develop Technology and Manpower (RSTA 11), Investments in Productivity Increasing Facilities (RSTA 24), and Investments in Specific Facilities (RSTA 25). According to the response of the GOK, prior to April 10, 1998, the tax credit for these investments was ten percent for domestic-made facilities and three percent for foreign-made facilities. However, for investments made after April 10, 1998, there is no difference between domestic-made and foreign-made facilities. The current tax credit is five percent for all of these investments.

Because the distinction between investments in domestic and foreign-made goods was eliminated for investments made after April 10, 1998, we preliminarily determine that the tax credits received pursuant to these investment programs for investments made after April 10, 1998 to no longer be countervailable. However, companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998 amendment to the tax law. In addition, the tax credits for Equipment Investment to Promote Workers' Welfare (RSTA 94) is still only available for companies using domestic machines and materials. Therefore, we continue to find the use of investment tax credits earned on Equipment Investment to Promote Workers' Welfare countervailable. We also continue to find countervailable the use of investment tax credits earned on investments made before April 10, 1998, under the other three investment tax programs.

According to the response of Dongbu, the tax credits earned for Investments in Equipment to Develop Technology and Manpower, Investments in Productivity Increasing Facilities, and Investments in

Specific Facilities were not based on a tax credit differential between purchasing domestic facilities and imported facilities. In addition, according to the company's response, the tax credit earned during the POI for Equipment Investment to Promote Workers' Welfare was not used to reduce taxes payable during the POI because the entire tax credit was carried forward to future years. The tax return provided in the company's response shows that the entire tax credit was, indeed, carried forward and was not used during the POI. Therefore, we preliminarily determine that Dongbu did not benefit from this program during the POI.

POSCO did use investment tax credits under this program that originated from tax credits earned based upon the differential between purchasing domestic facilities and imported facilities. To calculate the benefit from these investment tax credits, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1999 fiscal year income tax return, which was filed during the POI. We first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.14 percent *ad valorem* for POSCO.

G. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu also had an outstanding balance in this reserve during the POI.

In *Sheet and Strip,* 64 FR 30636, 30645, we determined that this program constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determined that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, as filed during the POI, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. *See* 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for Dongbu and Dongbu Corp by their respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the ''Subsidies Valuation'' section of this notice, we calculated a benefit for Dongbu Corp attributed to Dongbu. On this basis, we preliminarily calculated a countervailable subsidy of 0.07 percent *ad valorem* for Dongbu.

H. Reserve for Overseas Market Development Under TERCL Article 17

Article 17 of the TERCL allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning, from the reserve to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate income tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. This program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, Dongbu still had an outstanding balance in this reserve during the POI. Dongbu Corp., a trading company used by Dongbu and Posteel, a trading company used by POSCO, also had outstanding balances in this reserve during the POI.

In *Sheet and Strip,* 64 FR 30636, 30645, we determined that this program constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

To determine the benefit conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program under Article 16 of the TERCL. We used as our benchmark interest rate each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Section'' above. We then divided the benefit by the respective total export sales. In addition, using the methodology for calculating subsidies received by trading companies, which is also detailed in the ''Subsidies Valuation'' section of this notice, we calculated a benefit attributable to each respective producer. On this basis, we preliminarily calculated a countervailable subsidy of 0.02 percent *ad valorem* for Dongbu and a

countervailable subsidy of 0.02 percent *ad valorem* POSCO.

I. Asset Revaluation Under Article 56(2) of the TERCL

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. In *CTL Plate,* we found this program countervailable. *See, CTL Plate,* 64 FR 73176, 73183. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. To calculate the benefit under this program, we used the additional depreciation in the tax return filed during the POI, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit for each company by their respective total sales. On this basis, we preliminarily determine a net countervailable subsidy of 0.04 percent *ad valorem* for POSCO. Hysco received no benefit from this program because it had a net tax loss. Dongbu did not use this program.

J. Tax Reserve for Balanced Development Under TERCL Article 41/ RSTA Article 58

TERCL Article 41 allowed a company who planned to relocate its facility from a large city to a local area to establish a reserve equal to 15 percent of the facility's value. The balance in the reserve was not subject to corporate income tax in that year but all monies in the reserve must eventually be returned to the income account and are then subject to tax at the expiration of the grace period. The reserve amount equivalent to the amount incurred from the relocation of its facilities from the large city to a local area will be included in taxable income after a two-year grace period and over a three-year period. If the reserve amount is not used for the payment of relocation, this unused amount is included in the company's taxable income, after the two-year grace period. This program was replaced by Article 58 of RSTA. Subsequent to the establishment of Article 58 of RSTA, the program was terminated and the last date that this reserve could be established was August 31, 1999. Dongbu was the only company which established a reserve under this program before the program's August 31, 1999 termination. Dongbu still had an outstanding balance under this reserve during the POI.

We preliminary determine that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. Because the deferral of taxes owed provided under this program amounts to an interest-free loan equal to the company's tax savings, we also preliminarily determine that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefit conferred by this program to Dongbu, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1999, by the corporate tax rate for 1999. We treated the tax savings on these funds as a short-term interest-free loan. See 351.509 of the CVD Regulations. Accordingly, to determine the benefit, we multiplied the amount of tax savings by Dongbu's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. We then divided the benefit by the company's total sales. On this basis, we preliminarily calculated a countervailable subsidy of 0.02 *ad valorem* for Dongbu.

For our final determination, we will consider whether the methodology the Department has traditionally applied to these types of Korean tax programs accurately quantifies the benefit conferred by these tax reserves. As noted above, the Department has treated these tax reserve programs as providing a deferral of tax liability. That is, in Year X a company places funds into a reserve account and these funds are, therefore, not taxed in Year X. However, three years later when the funds in the tax reserve are returned to taxable income, then income taxes are paid on these funds in Year X plus three. Therefore, we have considered the tax savings on these funds to benefit the company in the form of an interest-free loan. However, if the company is in a tax loss situation and does not pay any taxes on income in the year in which the funds are refunded to the income account the funds placed into the tax reserve are never taxed. Under this scenario, the company, instead of being provided with a deferral of tax liability on these reserve funds, may have been provided with a complete exemption of tax liability on these funds. Therefore, we will carefully analyze this methodological issue for the final determination. We also invite interested parties to comment on this issue.

K. Short-Term Export Financing

In *Steel Products from Korea,* the Department determined that the GOK's short-term export financing program was countervailable (*see* 58 FR at 37350). Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable. During the POI, Hysco and POSCO were the only producers/exporters of the subject merchandise that used export financing.

To determine whether this export financing program confers a countervailable benefit, we compared the interest rate Hysco and POSCO paid on the export financing received under this program during the POI with the interest rate they would have paid on a comparable short-term commercial loan. *See* discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable benchmark interest rate. We then divided the benefit derived from all of Hysco's and POSCO's export loans by the value of the companies' total exports. On this basis, we determine a net countervailable subsidy of 0.08 percent *ad valorem* for Hysco and 0.04 percent *ad valorem* for POSCO.

L. Electricity Discounts Under the Requested Load Adjustment Program

The GOK introduced an electricity discount under the Requested Load Adjustment (RLA) program in 1990, to address emergencies in the Korea Electric Power Company (KEPCO's) ability to supply electricity. Under this program, customers with a contract demand of 5,000 kW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA

discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted POSCO electricity discounts under this program.

In *Sheet and Strip,* the Department found this program specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's total f.o.b. sales value for the POI. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

M. POSCO's Provision of Steel Inputs at Less Than Adequate Remuneration

POSCO is the only Korean producer of hot-rolled stainless steel coil (hot-rolled coil), which is the main input into the subject merchandise. During the POI, POSCO sold hot-rolled coil to Dongbu to produce subject merchandise. According to the response of Hysco, it purchased hot-rolled coil from POSCO, but it did not purchase hot-rolled coil from POSCO to produce subject merchandise. In *CTL Plate,* the Department determined that the GOK, through its ownership and control of POSCO, set prices of steel inputs used by the Korean steel industry at prices at less than adequate remuneration, and also found this program countervailable. *See CTL Plate,* 64 FR at 73184.

Under section 351.511(a)(2) of the CVD Regulations, the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, Dongbu imported hot-rolled coil; therefore, we are using Dongbu's actual imported prices of hot-rolled coil as our basis of comparison to the price at which POSCO sold hot-rolled coil to Dongbu. Based upon this comparison, we preliminarily determined that POSCO sold hot-rolled coil to Dongbu at less than adequate remuneration. As a result, a benefit is conferred to Dongbu under section 771(5)(E)(iv); therefore, we continue to find this program countervailable. Because Hysco did not purchase hot-rolled coil from POSCO to produce subject merchandise, we preliminarily determine that Hysco did not receive a benefit under this program. However, we are reviewing the issue of whether this program is an untied domestic subsidy. As this is the first time that this issue has been raised, the Department will collect additional information prior to the final determination; however, for the preliminary determination we continue to find this program tied to subject merchandise. We invite comments from interested parties.

To determine the value of the benefit under this program, we compared the monthly delivered weighted-average price charged by POSCO to Dongbu for hot-rolled coils to the monthly delivered weighted-average price Dongbu paid for imported hot-rolled coils. We made due allowances for the different specifications of hot-rolled coils, thus allowing the Department to compare a single product. We then multiplied this price difference by the quantity of hot-rolled coil that Dongbu purchased from POSCO during the POI. We then divided the amount of the price savings by the f.o.b. sales value of subject merchandise. On this basis, we preliminarily determine that Dongbu received a countervailable subsidy of 1.91 percent *ad valorem* from this program during the POI.

In *1999 Sheet and Strip,* the GOK argued that POSCO underwent privatization in September 2000, which constituted a program-wide change pursuant to section 351.526 of the CVD Regulations. In that administrative review, the Department determined that the information on the record in *1999 Sheet and Strip* was insufficient to determine whether a program-wide change occurred with respect to this program. We also noted that because of the long history and ties between the GOK and POSCO, the September 29, 2000 partial change in ownership must be carefully analyzed. In this current investigation, the respondents have made a similar claim that POSCO's change in ownership removes the GOK's control of POSCO which was found for this program in *CTL Plate* and in *Sheet and Strip.* The respondents have placed additional information on the record of this investigation regarding a program-wide change under section 351.526 of the CVD Regulations.

In *Sheet and Strip,* the Department relied upon a number of factors to determine that the GOK controlled POSCO. For example, we found that the GOK was the largest shareholder of POSCO and that the GOK's shareholdings of POSCO were ten times larger than the next largest shareholder. In order to further maintain its control over POSCO, the GOK enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK could exercise voting rights in excess of three percent of the company's common stock. In addition, the Chairman of POSCO was appointed by the GOK. The Chairman of POSCO was also a former Deputy Prime Minister and Minister of the GOK's Economic Planning Board, and was appointed as POSCO's president by the Korean President. Half of POSCO's outside directors were appointed by the GOK. The appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO was also only one of three companies designated a ''Public Company'' by the GOK. *See Sheet and Strip,* 64 FR 30642–43.

In this current investigation, the GOK and POSCO have placed information on the record indicating that many of the elements of control cited to in *Sheet and Strip* have changed. According to this information, the GOK through the government-owned Industrial Bank of Korea currently holds only 3.02 percent of POSCO's shares. According to the GOK, all of POSCO's shares are common shares and have equal voting rights. The GOK also reports that the Seoul Bank holds 1.47 percent of POSCO's shares. The Seoul Bank became government-owned as a result of the financial crisis in Korea. However, the GOK states that the shares listed for Seoul Bank are shares the bank holds on behalf of its customers in trust accounts. Shares held in these trust accounts are not in the possession of, or controlled by, the bank but belong to its customers.

POSCO also states that the restrictions that no individual other than the GOK can exercise voting rights in excess of three percent has been removed. Under the Securities and Exchange Act, a company designated as a ''public company'' was not permitted to have individual shareholders exercising voting rights in excess of three percent of the company's common shares.

According to POSCO's response, this legal requirement applied to POSCO until September 26, 2000. As part of POSCO's privatization process, the GOK removed POSCO's designation as a ''public company'' on that date. Accordingly, any legal limits on individual shareholder's voting rights or ownership in POSCO ceased on September 26, 2000. POSCO's Articles of Incorporation also included this restriction on the acquisition of shares. According to the company's response, POSCO had to wait until March 26, 2001, the next General Meeting of Shareholders, to amend its Articles of Incorporation. According to POSCO, although its Articles of Incorporation had not been implemented, once the GOK eliminated the restrictions on the acquisition of shares, POSCO was in effect no longer a public company.

According to POSCO's response, the company has seven standing directors and eight outside directors on its Board of Directors who are elected for terms of three years and may be re-elected. The directors are elected at the General Meeting of Shareholders, which usually take place in March of each year. According to the response, none of POSCO's current standing directors are either current or former government officials. With respect to the outside directors, five candidates were recommended by each of the five largest shareholders, which includes the IBK and Seoul Bank, and three candidates were recommended by the Board of Directors. There were changes to the Board of Directors during the General Meeting of Shareholders which occurred during the POI; two outside directors that were former government officials resigned and were replaced.

During verification we plan to closely examine whether or not the GOK continues either directly or indirectly to control POSCO's pricing policy in the Korean domestic market.

II. Programs Preliminarily Determined To Be Not Countervailable

A. GOK Infrastructure Investments at Kwangyang Bay Post-1991

Petitioners alleged that the GOK made infrastructure investments during the POI for POSCO at Kwangyang Bay. In *Plate in Coils,* we determined that the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. *See* 64 FR 15536. According to the responses of the GOK and POSCO, the only GOK expenditures made at Kwangyang Bay during the POI were for the container terminal. We determined that the GOK's investments in the container terminal were not specific in *Plate in Coils.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. In addition, both the responses of the GOK and POSCO state that the GOK did not build any ports at Kwangyang during the POI. Therefore, we continue to determine that this program is not countervailable.

B. R&D Aid for Anthracite Coal Technology

According to the GOK's response, this program refers to the project ''Technology for Sintered Anthracite Coal'' in the August 1996 report prepared by the Korea Iron and Steel Association (KOSA). According to the GOK, this project was solely financed by POSCO from the company's own funds. Because the GOK did not provide any funds for this project, we preliminarily determine that this program is not countervailable.

C. Asan Bay Infrastructure Subsidies

Petitioners alleged that the GOK provided infrastructure subsidies related to roads, piers, distribution facilities, and industrial water supplies to steel companies located at Asan Bay. Based upon the information on the record of this investigation, we preliminarily determine that no benefit was provided under this program. Therefore, we preliminarily find this program not countervailable.

According to the GOK's response, the roads located in and around the Asan Bay area can be divided into three different categories. The first category are roads that are located within the industrial estates which were built by Koland, the government agency which developed and sells the land at the Asan Bay industrial estates. The construction costs incurred by Koland for these roads are included as part of the land purchase price charged to companies purchasing land in the industrial estates. The second category are roads that are built on an individual company's site within the industrial estate which are built and paid for by the companies themselves. The third category of roads are the main roads and highways that are located around the Asan Bay area and which are used by the general public. Generally, the construction of toll free roads are handled by the Ministry of Construction and Transportation (MOCAT) and are built using funds from the GOK budget. These roads are part of the country's general road and highway system. The costs for construction and operation of toll roads are paid from the GOK budget and by the Korea Road Corporation (KRC). The construction costs of the KRC are recovered through the collection of tolls from users. The major highway that serves the Asan Bay area is the West Coast Highway, which is part of the National Highway system.

With respect to the allegation that companies located in Asan Bay industrial estates benefit from the GOK's provision of roads, we preliminarily determine that: (1) The roads build by the GOK within the industrial estate do not provide a benefit because the cost of road construction is included in the purchase price of the land; (2) the additional roads within the industrial estate on individual company sites do not provide a benefit because these roads are build and paid for by the company; and (3) the West Coast Highway and other national roads within the Asan Bay area are part of the country's national road system and thus constitute general infrastructure, and therefore do not provide a countervailable benefit.

With respect to the allegation of industrial water facilities, sewage facilities, and electric power facilities, the GOK states in its response that the companies located in the Asan Bay industrial estates pay for these services. The fees charged to these companies for these services are based on the general published tariff rates for each of these services. In addition, the GOK states that connections from the main water pipe to the user are constructed and paid for by the user; individual lines from the main electricity transformers to each companies' individual facility are constructed and paid for by the company; and sewage facilities located within an individual company's facility as well as the connection to the main sewage facility is constructed and paid for by the individual company. Because companies within the industrial estate pay for the construction of these facilities and pay the published tariff rates for industrial services, we preliminarily determine that no benefit is provided by the GOK by the provision of these goods and services. The GOK also states that there are no distribution depots at Asan Bay.

We note that with respect to this program, the Department was required to conduct verification of the provision of infrastructure at Asan Bay in a recent remand of *CTL Plate.* The Departments's remand redetermination of *CTL Plate* is in litigation, and thus, serves as no legal precedent in this instant investigation. However, factual information gathered in the course of the *CTL Plate* remand may be placed on the record of this investigation and considered in this

preliminary determination. Therefore, we have placed the public verification reports for both the GOK and POSCO from the *CTL Plate* remand on the record of this current investigation. *See* ''Remand Verification Report for the Government of Korea (GOK) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea'' and ''Remand Verification Report for Pohang Iron and Steel Co., Ltd. (POSCO) in the Court of International Trade (CIT) Remand of the Countervailing Duty Investigation of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea.'' Both of these public verification reports are dated November 26, 2001, and have been placed in the public file in the CRU. The information in the verification reports substantiates the information provided in the responses.

The petitioners also alleged that the companies located in the Asan Bay industrial estates benefit from the provision of port facilities. The port facilities at Asan Bay are not part of the industrial estates. The port facilities located at Asan Bay are owned and administered by the Inchon Port Authority (IPA), a division of the Ministry of Maritime and Fisheries (MOMAF). Furthermore, with respect to the provision of port facilities, we have previously found this program not countervailable in *Sheet and Strip.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we continue to determine the provision of port facilities to be not countervailable.

III. Programs Preliminarily Determined Not Used

A. Anthracite Coal for Less Than Adequate Remuneration

Petitioners allege that the GOK provides anthracite coal to steel producers at suppressed prices. Petitioners claim that these suppressed prices are part of a GOK price stabilization program where steel producers are receiving anthracite coal at less than adequate remuneration. According to the response of the GOK, this program is designed to support and maintain the domestic coal industry in Korea by managing anthracite and briquette prices and is administered by MOCIE and the Coal Industry Promotion Board (CIPB). The GOK fixes the highest selling price of anthracite and briquette and then provides funds to the mining companies and briquette manufacturing companies for the difference between their costs of production and sales prices through the coal industry stabilization fund. Thus, the GOK controls prices of anthracite coal mined in Korea.

POSCO was the only respondent to state that it uses anthracite coal. However, POSCO stated that during the POI, it used only imported anthracite coal and thus did not use this program. Based on the fact that POSCO had no purchases of domestic anthracite coal, we preliminarily determine that POSCO did not use this program during the POI.

B. Grants to Dongbu

These grants which were contained in Dongbu's 1996 Financial Statement related to R&D projects that Dongbu participated in between 1991 and 1995. These grants equaled less than 0.5 percent of Dongbu's sales in 1996. Thus, under section 351.524(b)(2) of the CVD Regulations, these grants are expensed in the year of receipt. Therefore, because no benefit was conferred to Dongbu from these grants during the POI, we preliminary determine that this program was not used.

C. Technical Development Fund (RSTA Article 9, Formerly TERCL Article 8)

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduces the amount of taxes paid by the company. Under this program, capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

In *CTL Plate,* we determined that this program is countervailable because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determine in *CTL Plate* that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. *See CTL Plate* at 73181. While we continue to find this program countervailable, Dongbu only contributed funds to this reserve at the three percent rate; therefore, we find that the company did not benefit from this program. Thus, the countervailable aspect of this program was not used.

D. Special Depreciation for Energy-Saving Equipment

E. Export Insurance

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with 703(d)(1)(A)(i) of the Act, we have calculated individual rates for the companies under investigation. In addition, in accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' These rates are summarized in the table below:

Producer/exporter	Net subsidy rate
Dongbu Steel Co., Ltd. (Dongbu)	2.84 percent *Ad Valorem*.
Hyundai Hysco (Hysco)	0.32 percent *Ad Valorem*.
Pohang Iron & Steel Co., Ltd. (POSCO)	0.55 percent *Ad Valorem*.
Union Steel Manufacturing Co., Ltd. (Union)	7.00 percent *Ad Valorem*.
All Others Rate	2.84 percent *Ad Valorem*.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amount indicated above. This suspension will remain in effect until further notice. Because the estimated preliminary countervailing duty rate for POSCO and Hysco are *de minimis*, these two companies will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5107 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Sulfanilic Acid from Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of sulfanilic acid from Hungary. For information on the estimated countervailing duty rates, see infra section on ''Suspension of Liquidation.'' We are also aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary.

EFFECTIVE DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to our regulations as codified at 19 CFR Part 351 (April 2001).

Petitioner

The petitioner in this investigation is Nation Ford Chemical Company (''the petitioner'').

Case History

The following events have occurred since the publication of the notice of initiation in the Federal Register. See Notice of Initiation of Countervailing Duty Investigation: Sulfanilic Acid from Hungary, 66 FR 54229 (October 26, 2001) (''Initiation Notice'').

On October 22, 2001, we issued countervailing duty questionnaires to the Government of Hungary (''GOH'') and to Nitrokemia 2000 Rt. (''Nitrokemia 2000''), the only producer/exporter of sulfanilic acid in Hungary.

On November 13, 2001, the petitioner filed a new subsidy allegation and also provided new information to supplement its previous uncreditworthiness allegation (which the Department had previously determined was unsupported). We addressed the issues raised in the petitioner's letter in the December 14, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations'' (''New Allegations Memorandum''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

On November 28, 2001, we received a response to the Department's questionnaire from the GOH. On December 17, 2001, the Department issued a supplemental questionnaire to

the GOH; this supplemental questionnaire also included questions regarding the new allegations contained in the petitioner's November 13 letter. On December 18, 2001, the GOH submitted a supplement to its original questionnaire response. The GOH submitted a response to the Department's supplemental and new programs questionnaire on January 31, 2002.

On December 4, 2001, we postponed the preliminary determination in this investigation until February 25, 2002. See Sulfanilic Acid from Hungary: Postponement of Preliminary Determination of Countervailing Duty Investigation, 66 FR 63674 (December 10, 2001).

Also on December 4, the Department sent letters to all of the parties in this proceeding instructing them how to properly file submissions with the Department. We did so, in part, because 1) on November 28, 2001, Nitrokemia 2000 improperly transmitted to the Department, via e-mail, its questionnaire response, but did not properly submit a hard-copy response pursuant to 19 CFR 351.303, and 2) many of the parties in this proceeding were not serving their submissions on other interested parties as required by 19 CFR 351.303. This December 4 letter also indicated that Nitrokemia 2000's questionnaire response needed to be filed according to the Department's filing requirements in order for it to be accepted by the Department.

On December 10, 2001, Nitrokemia 2000 responded via e-mail to this letter, but did not indicate whether it was planning to properly submit its questionnaire response. Therefore, on December 11, 2001, we sent a second letter to Nitrokemia 2000 notifying Nitrokemia 2000 that it needed to properly file its questionnaire response by December 18, 2001. (All e-mails that were received from Nitrokemia 2000 were attached for the record to the subsequent responses that were sent by the Department to Nitrokemia 2000.) On December 18, 2001, we received another e-mail from Nitrokemia 2000 which stated that Nitrokemia 2000 would be unable to respond to the Department's questionnaire by December 18, 2001 because its manufacturing facilities had been shut down for the holidays. Also on December 18, the Department issued a new program questionnaire to Nitrokemia 2000 which included questions related to the new allegations, noted above.

On December 21, 2001, we sent a third letter to Nitrokemia 2000 with respect to the filing of its questionnaire response. In this letter, although Nitrokemia 2000 had not actually asked for an extension of time to respond to the Department's questionnaire, we gave Nitrokemia one last extension until January 14, 2002 to respond to the Department's questionnaire. Additionally, we also gave Nitrokemia 2000 an extension until that same date to respond to the Department's December 18, 2001 new program questionnaire.

On January 11, 2002, Nitrokemia 2000 submitted its questionnaire response. Subsequent to this submission, on January 14, 2002, Nitrokemia 2000 sent the Department an e-mail indicating that it did not intend to submit a response to the Department's new program questionnaire, which was due to the Department on January 14. On January 16, 2002, we issued a supplemental questionnaire to Nitrokemia 2000. In this supplemental questionnaire, we gave Nitrokemia 2000 another opportunity to respond to the new programs questionnaire, extending its submission deadline to January 28, 2002. On January 28, 2002, Nitrokemia 2000 submitted its responses to both the Department's supplemental questionnaire and the new programs questionnaire.

On January 31, 2002, the petitioner submitted comments on the questionnaire responses filed by both Nitrokemia 2000 and the GOH. Nitrokemia 2000 responded to these comments on February 14, 2002.

On February 12 and February 19, 2002, the petitioner submitted comments on the upcoming preliminary determination.

Finally, on February 15, 2002, the petitioner requested that the Department align the final determination in this investigation with the final determination in the companion antidumping duty investigation of sulfanilic acid from Hungary. For further information, see infra section on ''Alignment with Final Antidumping Duty Determination.''

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because Hungary is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Hungary materially injure, or threaten material injury to, a U.S. industry. On November 13, 2001, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Hungary of the subject merchandise. See Sulfanilic Acid from Hungary and Portugal, 66 FR 57988 (November 19, 2001).

Alignment with Final Antidumping Duty Determination

On February 15, 2002, we received a request from the petitioner to postpone the final determination in this investigation to coincide with the final determination in the companion antidumping (''AD'') investigation of sulfanilic acid from Hungary.

The companion AD investigation and this countervailing duty investigation were initiated on the same date and have the same scope. See Initiation Notice and Notice of Initiation of Antidumping Duty Investigations:

Sulfanilic Acid from Hungary and Portugal, 66 FR 54214, 54218 (October 26, 2001). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the companion AD investigation of sulfanilic acid from Hungary.

Change in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (''Delverde III''), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993) (''GIA''). The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology following the CAFC's decision in Delverde III. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

There are two potential changes in ownership to be examined in this investigation: the creation of Nitrokemia 2000 in late 1997–1998, and Nitrokemia 2000's privatization in November/December 2000.

With respect to Nitrokemia 2000's creation in 1997–1998, we have preliminarily determined that no change-in-ownership analysis is required. According to record information, in November 1997, Nitrokemia Rt., a state-owned company, began an internal reorganization based on a decision by the GOH. As part of this reorganization, many of Nitrokemia Rt.'s production facilities, including its sulfanilic acid production facilities, were transferred to a newly created fully-owned subsidiary of Nitrokemia Rt., Nitrokemia 2000. Then, in May of 1998, Nitrokemia Rt. transferred Nitrokemia 2000 to the Hungarian State Privatization and Holding Company (''APV''), the Hungarian government entity responsible for privatizing state-owned shares and assets, in order for it to be sold to private investors.

According to Department practice regarding privatizations, sales ''must involve unrelated parties, one of which must be privately-owned.'' (See GIA, 58 FR at 37266, ''Types of Restructuring 'Transactions' and the Allocation of Previously Received Subsidies.'') Because all of the parties involved in this transaction were related in that they were all owned by the GOH, we do not conclude from the evidence on the record that we should conduct our ''person'' analysis with respect to the 1997–1998 transactions.

With respect to Nitrokemia 2000's privatization, in November/December 2000, 85 percent of Nitrokemia 2000 was sold to Nitrokemia Invest Kft., a group of Nitrokemia 2000 managers and executives, while the remaining 15 percent was offered for sale to company workers with the contingency that, if the company workers did not want the shares, the remaining 15 percent would be purchased by Nitrokemia Invest Kft. Record evidence indicates that Nitrokemia Invest Kft. was the sole bidder to respond to the call for tenders by APV. APV's call for tender specified that any prospective bidders must pay for the purchase of the company in cash only, and that bidders must agree to release APV from its role as guarantor of Nitrokemia 2000's Hungarian forint (''HUF'') 2 billion loan. The tender offer also required bidders to not reduce employment at Nitrokemia 2000 by more than 10 percent within the first three years after purchasing the company. Finally, the tender offer required the buyer and Nitrokemia 2000 to ''tolerate and facilitate, according to their ability, the continuation and earliest possible completion of the environmental clean-up work taking place on the Nitrokemia Industrial site, as well as the earliest possible determination of the normal environmental state of the industrial site.''

As noted above, in making the ''person'' determination, we analyze factors such as the continuity of general business operations, the continuity of production facilities, the continuity of assets and liabilities, and the retention of personnel. According to both the GOH and Nitrokemia 2000, the sale of Nitrokemia 2000 at the end of 2000 resulted in no changes in any of these aspects of Nitrokemia 2000. Therefore, for the preliminary determination, we are attributing subsidies received by Nitrokemia 2000 prior to its privatization to Nitrokemia's sales during all of the POI.

Use of Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the [Department] under this title, (B) fails to provide such information by the deadlines for

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability.

In their responses, both the GOH and Nitrokemia 2000 failed to answer many of the Department's numerous and repeated questions relating to the alleged forgiveness of environmental liabilities and the subsequent transfer of Nitrokemia 2000 to APV for privatization. For instance, in our original questionnaire, we asked both the GOH and Nitrokemia 2000 to describe the process by which Nitrokemia 2000 and Nitrokemia Rt. were divided, how it was determined which company would receive the assets and liabilities, how the finances of the companies were divided, and the amount of the outstanding environmental liabilities. We also asked the respondents to submit financial statements and/or annual reports for both Nitrokemia 2000 and Nitrokemia Rt. Neither the GOH nor Nitrokemia 2000 provided the required information, stating only that Nitrokemia 2000 was responsible for any liabilities generated from its current production. The same questions were also left unanswered in supplemental questionnaires, despite several extensions being granted to the respondents and the respondents having almost a month to reply to the supplemental questions.

We also asked the parties to respond to several questions relating to the creditworthiness of Nitrokemia 2000 in 1998. Neither respondent answered these questions, even after we provided another opportunity to Nitrokemia 2000 to answer the questions after it originally stated that it would not respond to the creditworthiness questionnaire at all.

Moreover, as noted in the ''Case History'' section, above, although the GOH provided a prompt and timely response to the Department's original questionnaire, Nitrokemia 2000 did not properly file its questionnaire response until almost a month and a half after the questionnaire response was due. Although Nitrokemia 2000 never formally requested an extension, the Department gave Nitrokemia 2000 three subsequent opportunities to provide its response to the questionnaire. Additionally, the GOH in its responses repeatedly indicated that only the company had much of the requested information, even though the GOH owned Nitrokemia 2000 through its state privatization company, APV, through almost the end of the POI.

Based on the above discussion, we preliminarily determine that the respondents withheld information requested by the Department relating to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to section 776(a)(2) of the Act. Moreover, we preliminarily determine that an adverse inference is justified with respect to the alleged forgiveness of environmental liabilities and Nitrokemia 2000's creditworthiness in 1998 pursuant to 776(b) of the Act because the respondents, as discussed above, have failed to cooperate to the best of their abilities.

With respect to Nitrokemia 2000's creditworthiness in 1998, as adverse facts available, we preliminarily determine that Nitrokemia 2000 was uncreditworthy in 1998. See, infra, further discussion in the ''Creditworthiness'' section.

As for the forgiveness of the environmental liabilities, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness attributable to Nitrokemia 2000 during the POI pursuant to 19 CFR 351.508. As adverse facts available, we determined that the total amount of the liability is HUF 7.5 billion, the average amount of the HUF 5 to 10 billion estimates provided in the petition. See, infra, ''Analysis of Programs'' section for a more detailed discussion of the attribution of the benefit amount to Nitrokemia 2000 and the benefit calculation itself.

When employing an adverse inference, the statute indicates the Department may rely upon information derived from, inter alia, the petition. In doing so, however, the Department should ''to the extent practicable'' corroborate the information from independent sources reasonably at its disposal. See Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994), at 870 regarding use of ''secondary'' information. In this case, with respect to Nitrokemia 2000's creditworthiness in 1998, several independent newspaper articles included in the petition indicate that Nitrokemia was not in sound financial condition in 1998. Moreover, Nitrokemia Rt.'s 1998 financial statements and financial ratios show that the company was losing money at that time, and that the company was not in good financial condition. (See New Allegations Memorandum for a further discussion of Nitrokemia's creditworthiness analysis.)

As for Nitrokemia's environmental liabilities, we found several independent news articles (in addition to the news articles and study done by the U.S. Foreign Commercial Service in Hungary, which were both included in the petition) that show that the amount of environmental liabilities are approximately HUF 5 to 10 billion. Therefore, we determine that the facts available information in question has probative value, and that we may appropriately rely upon it.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. See Countervailing Duties; Final Rule, 63 FR 65348, 65367 (November 28, 1998).

In this investigation, we are examining Nitrokemia 2000's

creditworthiness in 1998. Neither the GOH nor Nitrokemia 2000 provided a response to the Department's uncreditworthiness questions. Thus, as discussed, supra, in the ''Use of Facts Available'' section, we preliminarily determine, as facts available, that Nitrokemia 2000 was uncreditworthy in 1998.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the ''IRS Tables''). For sulfanilic acid, the IRS Tables prescribe an AUL of 11 years. Neither Nitrokemia 2000 nor any other interested party disputed this allocation period. Therefore, we have used the 11–year allocation period for Nitrokemia 2000.

Benchmarks for Discount Rates and Loans

Because we found Nitrokemia 2000 to be uncreditworthy in 1998 (see, supra, section on ''Creditworthiness''), we have calculated the long-term uncreditworthy discount rate for 1998 in accordance with 19 CFR 351.524(d)(3)(ii).

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C- rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by creditworthy companies, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the weighted-average rate on fixed-rate long-term enterprise sector loans in Hungary as reported by the National Bank of Hungary. For the term of the debt, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on an 11–year term, since the AUL in this investigation is 11 years.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Program Preliminarily Determined to Be Countervailable

Forgiveness of Environmental Liabilities

According to record evidence, Nitrokemia 2000 was created in November 1997 as a fully-owned subsidiary of Nitrokemia Rt. through an internal reorganization. Record evidence indicates that, as part of this reorganization, Nitrokemia 2000 was given responsibility for Nitrokemia Rt.'s viable operations, including its sulfanilic acid operations. Nitrokemia Rt. continued to be responsible for the company's poorly-performing operations, as well as all of the company's previous environmental liabilities generated by the plants' operations prior to the division. Information on the record from the petition indicates that these liabilities were valued between HUF 5 billion and 10 billion.

Then, in May 1998, Nitrokemia 2000 was transferred from Nitrokemia Rt. to APV in order for the GOH to begin preparations for privatization. We preliminarily determine that it was at this point that Nitrokemia 2000 was completely removed from the environmental responsibilities that had been generated in the past. Although the split from Nitrokemia Rt. had begun in November 1997, because Nitrokemia was a fully-owned subsidiary of Nitrokemia Rt. until May 1998, Nitrokemia 2000 was still potentially impacted by these environmental liabilities while Nitrokemia Rt. was still its parent company. However, once Nitrokemia 2000 was transferred to APV, the split between Nitrokemia Rt. and Nitrokemia 2000 was completed, and Nitrokemia 2000 was removed from its previous environmental liabilities.

As discussed, supra, in the ''Use of Facts Available'' section, we have, as facts available, preliminarily determined that the removal of Nitrokemia 2000's responsibility for any environmental clean-up liabilities is a countervailable subsidy. Specifically, as adverse facts available, we preliminarily determine that a financial contribution exists pursuant to section 771(5)(D)(i) in the form of debt forgiveness, with the benefit being the portion of the debt forgiveness that is attributable to Nitrokemia 2000. As adverse facts available, we determined that the appropriate amount of the total environmental forgiveness is HUF 7.5 billion, the average amount of the estimates provided in the petition. Finally, we also preliminarily determine that the debt forgiveness is specific pursuant to section 771(5A)(D) because it was limited to Nitrokemia.

According to Nitrokemia 2000's and Nitrokemia Rt.'s 1998 financial statements (which were submitted by the petitioner along with Nitrokemia 2000's 1999 and 2000 annual reports and Nitrokemia Rt.'s financial statements), following the split of the two companies, Nitrokemia 2000 received 53 percent of the assets of the former company. Therefore, in order to determine the amount of the benefit attributable to Nitrokemia 2000, we attributed 53 percent of the total environmental liabilities, noted above as HUF 7.5 billion, to Nitrokemia 2000.

This methodology is consistent with the methodology we used in the Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508, 15513 (March 31, 1999) (''SSPC Italy''). In SSPC Italy, we found that when ILVA S.p.A. was demerged into three separate entities, only one of the three entities that were created in the split received the former ILVA's liabilities, leaving the other two entities free of ILVA's former debt. We determined that the forgiveness of debt in that instance was a countervailable subsidy to the two companies that did not receive any of the liabilities, and based the amount of the benefit attributable to the company under investigation in that case on the relative asset allocations of the companies that were formed from ILVA's assets.

We treated the debt forgiveness to Nitrokemia 2000 as a non-recurring grant consistent with 19 CFR 351.524 because it was a one-time, extraordinary event. Because Nitrokemia was uncreditworthy in 1998, the year in which the debt forgiveness took place, we used the uncreditworthy discount rate described in the ''Subsidies Valuation Information'' section, above. Finally, we divided the amount allocated to the POI from this debt forgiveness attributable to Nitrokemia 2000 by Nitrokemia 2000's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 10.69 percent ad valorem exists for Nitrokemia 2000.

II. Program Preliminarily Determined to Not Be Countervailable

Restructuring Assistance Provided to Nitrokemia 2000

Nitrokemia 2000's 1998 financial statements show that its issued capital at the time of its inception was HUF 4,653,360,000, which is HUF 2 billion more than the issued capital transferred from Nitrokemia Rt. according to Nitrokemia Rt's financial statements.

In its response, Nitrokemia 2000 reported that this HUF 2 billion increase over the invested capital provided by Nitrokemia Rt. was the result of cash received through a bond offering at its inception, and not a cash infusion by the GOH as alleged by the petitioner. Therefore, because there is no evidence of a financial contribution from the GOH as described in section 771(5)(D) of the Act, we preliminarily determine that this increase in Nitrokemia 2000's invested capital in 1998 is not a countervailable subsidy pursuant to section 771(5) of the Act.

However, in their responses, both the GOH and Nitrokemia 2000 report that Nitrokemia 2000 received a government guarantee on a loan that was outstanding during the POI. Specifically, according to Nitrokemia 2000's financial statements and annual reports, Nitrokemia 2000 received a government guarantee for an HUF 2 billion loan that it took out in January 2000. This loan was repaid as of December 19, 2000 when the company was privatized pursuant to the requirements put forth in the APV tender.

While we do not currently have sufficient information to further analyze this loan guarantee for the preliminary determination, pursuant to section 775(1) of the Act, we will be requesting additional information on the nature of this loan guarantee from the GOH and Nitrokemia 2000 prior to the final determination.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for the only company under investigation, Nitrokemia 2000.

With respect to the ''all others'' rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an ''all others'' rate for exporters and producers not individually investigated. In this case, although the rate for the only investigated company is based on facts available under section 776 of the Act, there is no other information on the record upon which we could determine an ''all others'' rate. As a result, in accordance with sections 777A(e)(2)(B) and 705(c)(5)(A)(ii), we have used the rate for Nitrokemia 2000 as the ''all others'' rate.

We preliminarily determine the total estimated net countervailable subsidy rate for Nitrokemia 2000 to be the following:

Producer/Exporter	Net Subsidy Rate
Nitrokemia 2000 Rt.	10.69%
All Others	10.69%

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of sulfanilic acid from Hungary for Nitrokemia 2000 and for any non-investigated exporters that entered, or were withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice. However, this suspension of liquidation may not remain in effect for more than four months pursuant to section 703(d)(3) of the Act.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

February 25, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5103 Filed 3–1–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020502A]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

SUMMARY: NMFS has received a request from the Department of the Air Force, 30th Space Wing, on behalf of The Boeing Company (Boeing) for an authorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Boeing to incidentally take, by harassment, small numbers of Pacific harbor seals at south VAFB beginning in mid-March 2002.

DATES: Comments and information must be received no later than April 3, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments will not be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext. 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

...any act of pursuit, torment, or annoyance which

(a) has the potential to injure a marine mammal or marine mammal stock in the wild (''Level A harassment''); or

(b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (''Level B harassment'').

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2001, NMFS received an application from the 30th Space Wing on behalf of Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals incidental to harbor activities related to the Delta IV/EELV, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging. The harbor where activities will take place is on south VAFB approximately 2.5 miles south of Point Arguello, CA, and approximately 1 mile north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Modifications to the existing wharf are needed to accommodate the specially designed transport vessel, the Delta Mariner, that will be used for delivering the Delta IV/EELV's common booster core (CBC). These modifications involve removing portions of the wharf surface, re-surfacing the wharf with concrete and stainless steel rub-rails, and construction of a ramp on the seaward portion of the wharf. Equipment to be used includes: a skip-loader, concrete saw, concrete ready-mix truck, and dump truck. Measured noise levels of equivalent heavy equipment ranged from 61 dB A-weighted (quietest measurement from clamshell dredge measurement) to 81 dB A-weighted (loudest measurement from roll-off truck transporter) at a distance of 76.2 meters (m) (250 feet, ft). (Acentech, 1998). These wharf modifications are scheduled to begin in mid-March 2002 for a 6–week period.

Delta Mariner CBC off-loading operations and associated cargo movement activities will occur a maximum of 6 times per year, with the first Mariner visit scheduled for April 2002 and the first off-load operation for August 2002. The Delta Mariner is a 95.1 m (312 ft) long, 25.6 m (84 ft) wide steel hull ocean-going vessel capable of operating at a 2.4 m (8 ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the Mariner. Sources of noise from the Delta Mariner vessel include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the CBC from the Mariner requires use of an Elevating Platform Transporter (EPT). The EPT is an additional source of noise, with sound levels measured at a maximum of 82 dB A-weighted 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). EPT operation procedures require 2 short (approximately 1/3 seconds) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the Mariner by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of Mariner docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the Delta Mariner, the harbor will need to be dredged to a working depth of approximately 3.0 m (10 ft) mean lower low water level plus a 0.61 m (2 ft) over-dredge. Dredging of the harbor will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 61–81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24–hours a day for 3–5 weeks. The frequency of maintenance dredging will be based on fill rate surveys conducted periodically during the first year following the initial dredge

to determine the sedimentation rate. Boeing expects maintenance dredging would likely be required every 2–3 years.

A more detailed description of the work proposed for 2002 is contained in the application which is available upon request (see ADDRESSES) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Description of Habitat and Marine Mammals Affected by the Activity

The only marine mammal species likely to be harassed incidental to harbor activities at south VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,040 (775 on south VAFB) based on sighting surveys and telemetry data (SRS Technologies 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 76.2 m (250 ft) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting wharf modification, Delta Mariner operations, cargo loading, and dredging activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of 7 seals sighted per day. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 kilometers (km) (1 mile, mi) north.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Three other marine mammal species are known to occur infrequently along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These three species are: the California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*) and northern fur seal (*Callorhinus ursinus*). Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski et al. (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the wharf modifications, Delta Mariner and off-loading operations, and dredging, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound levels from all equipment drops to a maximum level of 95 dB A-weighted within 50 ft (15.2 m) of the sources. In contrast, the ambient background noise measured approximately 76.2 m (250 ft) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

According to the MMPA, when harbor activities disrupt the behavioral patterns of harbor seals, they are considered to be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and will not cause serious injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and would be considered a take by harassment due to disruption of behavioral patterns. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites, could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, since on average the number of harbor seals hauled out near the site is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes (i.e., Level B harassment).

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and ENSR International's 2001 Final Environmental Assessment. Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 30 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 7 seals sighted during previous dredging operations in the harbor. Using the maximum and average number of seals hauled out per day, assuming that half of the seals will use the site at least twice, assuming that half of the seals hauled out will react to the activities, and using a maximum total of 83 operating days in 2002–2003, NMFS calculates that between 623 and 145 Pacific harbor seals may be subject to Level B harassment, as defined in 50 CFR 216.3.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals that haul out near the south VAFB harbor. The harbor seal haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals in the area to reproduce.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out near south VAFB harbor are expected based on the relatively low levels of sound generated by the equipment to be used during Boeing's harbor activities (maximum level of 95 dB A-weighted within 50 ft (15.2 m)) and the relatively short time periods over which the project will take place (totaling approximately 83 days). However, Boeing expects that the harbor activities may cause disturbance reactions by some of the harbor seals hauled out on the adjacent beach and rocks. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities should be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A qualified marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities. If flushing results, then the activities suspected of causing the seals to enter the water will be delayed until the seals leave the area.

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks.

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for harbor seals during all harbor activities. During nighttime activities, the harbor area will be lit and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of harbor seals in the project area prior to initiating project activities.

(2) Conducting and recording observations on harbor seals in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for harbor seals to haul out (+ 2 ft. or less).

(3) Conducting post-construction observations of harbor seal haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

As required by the MMPA, this monitoring plan will be subject to a review by technical experts prior to formal acceptance by NMFS.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

Boeing has not requested the take of any listed species. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

Conclusions

NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging, will result, at worst, in a temporary modification in behavior by Pacific harbor seals. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since harbor seals haul out in such small numbers near the site (maximum hauled out in one day estimated at 30 seals). The effects of the harbor activities are expected to be limited to short-term and localized behavioral changes. Therefore, NMFS preliminarily concludes that the effects of the planned demolition activities will have no more than a negligible impact on pinnipeds.

Due to the localized nature of these activities, the number of potential takings by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels and will be entirely avoided through the incorporation of appropriate mitigation measures. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Proposed Authorization

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south Vandenberg Air Force Base, CA, (VAFB) over a 1–year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse

impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: February 26, 2002.

David Cottingham,

Deputy Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–5101 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP).

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, March 18, 2002, and conclude by 3 p.m. on Wednesday, March 20, 2002.

ADDRESSES: The meeting will be held at the Isle of Capri Hotel, 151 Beach Boulevard, Biloxi, MS; telephone: 866–475–3847.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and begin the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 11, 2002.

Dated: February 27, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–5102 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022602D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee and Monkfish Oversight Committee in March, 2002, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on March 18, 2002 and March 21, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 18, 2002, 9:30 a.m.—Capacity Oversight Committee Meeting.

The Committee will finalize the list of capacity reduction proposals to be forwarded to the Council for further consideration and possible inclusion in Amendment 13 to the Northeast Multispecies Fishery Management Plan. Based on the Council direction, the range of proposals will provide a basis for reducing latent or unused days-at-sea (DAS) and capacity to further the biological goals of Amendment 13; under consideration include Alternatives that reduce the amount of allocated DAS from approximately 150,000 to between 67,000 and 86,000 allocated DAS.

Thursday, March 21, 2002, 8:30 a.m.—Monkfish Oversight Committee Meeting.

The Committee will review Council comments on Amendment 2 Goals and Objectives and make appropriate adjustments. The Committee will review information provided by the Plan Development Team and/or Councils' staffs and outline management strategies for further development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 27, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–5100 Filed 3–1–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries, Exported Before April 1, 2002, and Entered for Consumption or Withdrawn from Warehouse for Consumption Before June 1, 2002

February 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to allow a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the **Federal Register** informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in *Rubie's Costume Company v. United States.* This announcement applied to imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170). The Committee for the Implementation of Textile Agreements has decided to allow a grace period before imposing quota and visa requirements. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to exempt from export visa and quota requirements goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002.

EFFECTIVE DATE: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

The Committee for the Implementation of Textile Agreements has decided to allow a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170).

Effective on March 1, 2002, you are directed to exempt from export visa and quota requirements goods as described above that are exported prior to April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption prior to June 1, 2002.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–5194 Filed 2–28–02; 1:47 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Notice.

DATES: Consideration will be given to all comments received by April 13, 2002.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Suppliers Customer Satisfaction Diagnostic Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 380.

Responses per Respondent: 1.

Annual Responses: 380.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 95.

Needs and Uses: The information collection is necessary to determine the reasons for supplier satisfaction/dissatisfaction with Defense acquisition processes. The information will be used to improve Defense acquisition processes to assure supplier satisfaction. Feedback from suppliers will be used to formulate policies, programs and practices for improving the level of supplier satisfaction. A web-based survey is planned for the supplier diagnostic survey. The survey instrument will be posted on the web, and suppliers will be sent invitations via e-mail to access the Web site and complete the survey instrument.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4982 Filed 3–1–02; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Notice.

DATES: Consideration will be given to all comments received by April 3, 2002.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Security Security Customer Satisfaction Survey; OMB Number 0704—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 25 minutes.

Annual Burden Hours: 2,500.

Needs and Uses: This information collection is necessary to obtain information to ascertain the level of satisfaction that private sector industrial users have with the products and services the Defense Security Service (DSS) provides. This survey is necessary to meet the requirements of the FY

2000–2003 Defense Management Council (DMC) Performance Contract. The DMC Performance Contract requires DSS to develop and administer customer satisfaction surveys for each of its three primary business areas: the Personnel Security Investigations Program (PSI), the Industrial Security Program (ISP), and the Security Education and Training Program. The survey will be administered on-line via the Internet.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: Biennially.

Respondents Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 30503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4983 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB review; comment request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 3, 2002.

Title, Form, and OMB Number: Application for Training leading to a Commission in the United States Air Force; AF Form 56; OMB Number 0701–0001.

Type of Request: Reinstatement.

Number of Respondents: 2,900.

Responses per Respondent: 1.

Annual Responses: 2,900.

Average Burden per Response: 3 hours.

Annual Burden Hours: 8,700.

Needs and Uses: Information contained on Air Force Form 56 supports the Air Force's selection for officer training programs for civilian and military applicants. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to a commissioning program. Data from this form is used to select fully qualified persons for the training leading to commissioning. Data supports the Air Force in verifying the eligibly of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DOIS, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4984 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–06]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–06 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 FEB 2002
In reply refer to:
I-01/013483

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-06, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $255 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$153 million
Other	$102 million
TOTAL	$255 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: In support of their Fast Missile Craft Program for 53 RGM-84L-4 Harpoon Block II anti-ship missiles, four PHALANX Close-In Weapon Systems (CIWS), 50,000 rounds of 20mm tungsten ammunition, four AN/SWG-1A Harpoon Shipboard Command Launch Control Systems, spare and repair parts, support equipment, publications, U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support.**

(iv) **Military Department: Navy (LDU)**

(v) **Prior Related Cases, if any:**
FMS case ABZ - $68 million - 18Apr98
FMS case ABW - $48 million- 27Jan98
FMS case AAZ - $53 million - 6Jun94
FMS case AAU - $39 million - 27Aug90
FMS case AAG - $38 million - 24Nov83

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress: 14 FEB 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Weapons Support for the Fast Missile Craft Program

The Government of Egypt has requested a possible sale in support of their Fast Missile Craft Program for 53 RGM-84L-4 Harpoon Block II anti-ship missiles, four PHALANX Close-In Weapon Systems (CIWS), 50,000 rounds of 20mm tungsten ammunition, four AN/SWG-1A Harpoon Shipboard Command Launch Control Systems, spare and repair parts, support equipment, publications, U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support. The estimated cost is $255 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East. This sale is consistent with these U.S. objectives and with the 1950 Treaty of Mutual Cooperation and Security.

The Fast Missile Craft will be acquired by direct commercial sale and notified by a separate 36(c) notification. These additional systems, which are to be installed on the Fast Missile Craft, will allow Egypt to maintain its current defensive capability. Egypt currently has CIWS and Harpoon missiles in their inventory and will have no difficulty absorbing these additional weapons systems.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be The Boeing Company of St. Charles, Missouri and Raytheon Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four contractor representatives for the follow-on technical support services to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MK 15 Block 1B PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2, The AN/SWG-1A Harpoon Ship Command Launch Control System (HSCLCS) uses target position data to compute a fire control solution for missile launch. It includes equipment for monitoring and controlling Harpoon missile launching and for performing maintenance and training procedures. The AN/SWG-1A provides capabilities such as automatic engagement planning, waypoint options, off-axis launch, salvo select options, and background ship avoidance. The HSCLCS contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

(1) HARPOON control console
(2) HSCLCS embedded trainer

3. The RGM-84L-4 Block II Harpoon missile, excluding a land strike capability (coastal target suppression), provides a Global Positioning System/Inertial Navigation System capability with improved Anti-Surface Warfare against ships in the open ocean and littoral waters. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a Guidance Section Components
(1) radar seeker (S)

b. AN/SWG-1A(V) Command Launch System
(1) Harpoon control console (C)
(2) Harpoon embedded trainer software (C)

c. Missile Characteristics and Performance Data (S)

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–4985 Filed 3–1–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting.

AGENCY: Defense Intelligence Agency Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, As amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: March 5 & 6, 2002 (830 am to 1700 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria J. Prescott, Director/Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–4981 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 222. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 222 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 221. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 222 UPDATES RATES FOR HAWAII.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
BARROW	140		75		215	05/01/2000
BETHEL	90		63		153	09/01/2001
CLEAR AB	80		55		135	09/01/2001
COLD BAY	153		60		213	11/01/2001
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER	85		49		134	09/01/2001
CORDOVA	80		72		152	03/01/2000
CRAIG						
05/01 - 08/31	90		65		155	09/01/2001
09/01 - 04/30	77		64		141	09/01/2001
DEADHORSE	80		67		147	03/01/1999
DELTA JUNCTION	79		50		129	09/01/2001
DENALI NATIONAL PARK						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
DILLINGHAM	95		60		155	09/01/2001
DUTCH HARBOR-UNALASKA	110		67		177	09/01/2001
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
ELMENDORF AFB						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FAIRBANKS						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
FT. GREELY	79		50		129	09/01/2001
FT. RICHARDSON						
05/01 - 09/15	161		65		226	09/01/2001
09/16 - 04/30	89		57		146	09/01/2001
FT. WAINWRIGHT						
05/01 - 09/15	149		66		215	09/01/2001
09/16 - 04/30	75		58		133	09/01/2001
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	125		66		191	09/01/2001
09/01 - 05/31	90		63		153	09/01/2001
HOMER						
05/15 - 09/15	119		67		186	09/01/2001
09/16 - 05/14	79		63		142	09/01/2001
JUNEAU	109		65		174	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	131	69	200	09/01/2001
11/01 - 03/31	86	65	151	09/01/2001
KENNICOTT	159	71	230	09/01/2001
KETCHIKAN	98	64	162	09/01/2001
KING SALMON				
05/01 - 10/01	160	80	240	09/01/2001
10/02 - 04/30	95	73	168	09/01/2001
KLAWOCK				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
KODIAK	99	70	169	09/01/2001
KOTZEBUE				
09/01 - 04/30	95	62	157	10/01/2001
05/01 - 08/31	137	69	206	09/01/2001
KULIS AGS				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
MCCARTHY	159	71	230	09/01/2001
METLAKATLA				
05/30 - 10/01	98	56	154	09/01/2001
10/02 - 05/29	78	54	132	09/01/2001
MURPHY DOME				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
NOME	89	64	153	09/01/2001
NUIQSUT	175	53	228	09/01/2001
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/31 - 09/30	119	66	185	09/01/2001
10/01 - 05/30	74	61	135	09/01/2001
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY	98	64	162	09/01/2001
SPRUCE CAPE	99	70	169	09/01/2001
TANANA	89	64	153	09/01/2001
UMIAT	172	78	250	09/01/2001
VALDEZ				
05/01 - 10/01	109	69	178	09/01/2001
10/02 - 04/30	99	68	167	09/01/2001
WAINWRIGHT	124	51	175	09/01/2001
WASILLA	95	60	155	01/01/2000
WRANGELL	98	64	162	09/01/2001
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	68	180	03/01/2002
EASTPAC NAVAL COMP TELE AREA	112	68	180	03/01/2002
FT. DERUSSEY	112	68	180	03/01/2002
FT. SHAFTER	112	68	180	03/01/2002
HICKAM AFB	112	68	180	03/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	68	180	03/01/2002
ISLE OF HAWAII: HILO	89	61	150	03/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	155	71	226	03/01/2002
12/01 - 04/30	203	76	279	03/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	155	74	229	03/01/2002
ISLE OF OAHU	112	68	180	03/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	155	71	226	03/01/2002
12/01 - 04/30	203	76	279	03/01/2002
KILAUEA MILITARY CAMP	89	61	150	03/01/2002
LUALUALEI NAVAL MAGAZINE	112	68	180	03/01/2002
MCB HAWAII	112	68	180	03/01/2002
NAS BARBERS POINT	112	68	180	03/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	68	180	03/01/2002
SCHOFIELD BARRACKS	112	68	180	03/01/2002
WHEELER ARMY AIRFIELD	112	68	180	03/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	16	29	12/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4988 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for Force Transformation of the 172nd Infantry Brigade (Separate) and Mission Sustainment in Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army proposes to implement a range of activities related to force transformation and mission sustainment in Alaska. The primary proposed activities are associated with conversion of the 172nd Infantry Brigade (Separate) into an Interim Brigade Combat Team (IBCT), a rapidly deployable, early entry, medium weight force with a decreased logistical footprint. Impacts to the human environment, to include surrounding communities, from restructuring the 172nd infantry Brigade (Separate) and from enhancing associated ranges, facilities, and infrastructure to meet transformation and mission sustainment objectives will be analyzed.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Gardner, Directorate of Public Works, 730 Quartermaster Road, Attention: APVR–RPW–EV (Gardner), Fort Richardson, AK 99505–6500; telephone: (907) 384–3003, fax: (907)384–3047; or Mr. Calvin Bagley, Center for Environmental Management of Military Lands (CEMML), Colorado State University, Fort Collins, CO 80523–1490; telephone: (970) 491–3324, fax: (970) 491–2713; or *www.cemml.colostate.edu/alaskaeis.*

SUPPLEMENTARY INFORMATION: The proposed action would affect changes to force structure and changes to ranges, facilities, and infrastructure designed to meet objectives of Army Transformation in Alaska. Proposed locations for changes include Fort Richardson, Fort Wainwright, and outlying training areas (e.g., Gerstle River and Black Rapids). Proposed areas of activity changes on Fort Wainwright would include cantonment areas, Tanana Flats Training Area, Yukon Training Area, and Donnelly Training Area (formerly Fort Greely). The proposed action would alter various activities on military and training lands in Alaska. The range of proposed activities include: (1) Fielding weapon systems and equipment (to include a net increase of over 300 Interim Armored

Vehicles and probable additions of several unmanned aerial vehicles); (2) Construction, renovation, and demolition activities to include construction and upgrades to several small to large arms ranges, range complexes and urban training facilities; construction of IBCT vehicle motor pool facilities; construction of troop and equipment cargo and deployment facilities; enhancements to installation information infrastructure and corresponding facilities; upgrades to transportation infrastructure; construction/replacement of barracks and/or housing; and construction of additional administrative/control buildings and structures; (3) Land transactions (acquisition, asset management and disposal); (4) Deployment of forces and specific training for deployment; (5) Training to achieve and maintain readiness to perform assigned missions; (6) institutional matters to include the entire range of diverse day-to-day activities not otherwise accounted for in other activities.

Alternatives include: (1) No Action (existing unit structure and training, no specifically planned activities for transformation); (2) Transformation of the 172nd Infantry Brigade (Separate) to an IBCT using existing ranges facilities and infrastructure as they are now configured; (3) Transformation of the 172nd Infantry Brigade (Separate) to an IBCT and mission sustainment activities including new, additional, or modified ranges, facilities and infrastructure; (4) Total transformation of U.S. Army Alaska (USARAK) mission activities and capabilities, to include the near-term transformation of the 172nd Infantry Brigade (Separate) to an IBCT, in order to meet Objective Force requirements fulfilling the Army Vision of an Army that has the characteristics of being more responsive, deployable, agile, versatile, lethal, survivable, and sustainable; being strategically responsive; and being able to deploy rapidly and being dominant across the full spectrum of operations.

Other alternatives that may be raised during the scoping process will be considered.

Publication of this Notice of Intent does not foreclose consideration of any courses of actions or possible decisions addressed by the U.S. Department of the Army in its Draft Programmatic Environmental Impact Statement (PEIS) for Army Transformation, dated June 2001. No final decisions will be made regarding Transformation in Alaska prior to completion and signature of the Record of Decision for the PEIS for Army Transformation.

Federal, state, and local agencies, organizations, and the public are invited to participate in the scoping process for the completion of this EIS by participating in scoping meetings or submitting written comments. The scoping process will assist the Army in identifying potential impacts to the quality of the human environment. Scoping meetings will be held in Anchorage, Delta Junction, and Fairbanks, Alaska. Notification of the times and locations for the scoping meetings will be published in local newspapers. Written comments will be accepted within 30 days of the scoping meetings. Written comments may be forwarded to Mr. Kevin Gardner at the above address.

Dated: February 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health, OASA(I&E).

[FR Doc. 02–5085 Filed 3–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for Force Transformation of the 2nd Brigade, 25th Infantry Division (Light) Hawaii

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army proposes to implement a range of activities related to force transformation in Hawaii. The primary proposed activities are associated with conversion of the 2nd Brigade, 25th Infantry Division (Light) to an Interim Brigade Combat Team (IBCT), a rapidly deployable, early entry, medium weight force with a decreased logistical footprint. Impacts to the human environment, to include surrounding communities, from restructuring and from enhancing associated ranges, facilities, and infrastructure to meet Army Transformation objectives will be analyzed.

FOR FURTHER INFORMATION CONTACT: *Transformation Information*: Mr. Ronald Borne, (808) 656–2878, extension 1122; by fax (808) 656–8200; by mail at Commander, U.S. Army Garrison, Hawaii, ATTN: APVG–GCT (Borne), Stop 518, Schofield Barracks, Hawaii 96797; or by e-mail: *ronald.borne@schofield.army.mil.*

EIS Information: Mr. Earl Nagasawa, (808) 438–0772; by fax (808) 438–7801; by mail at U.S. Army Corps of Engineers, Honolulu Engineer District, Program and Project Management Division, Attn: CEPOH–PP–E (Nagasawa), Building 252, Fort Shafter, Hawaii 96858–5440; or by e-mail at *earl.nagasawa@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The proposed action would result in changes to various military lands in Hawaii. Categories of proposed activities include: (1) Fielding of new or modified weapon systems, armored vehicles and equipment; (2) Construction activities including erection of buildings, training facilities and infrastructure, and renovation or demolition of buildings and facilities at military installations located on the islands of Oahu and Hawaii; (3) Land transactions (acquisition, asset management and disposal); (4) Deployment of forces and specific training for deployment; (5) Training to achieve and maintain readiness to perform assigned missions; (6) Other actions necessary to support a net increase in troops and vehicles to be assigned to the 2nd Brigade, 25th Infantry Division.

Proposed Action: The Proposed Action specifically entails transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT with proposed changes to ranges, facilities, and infrastructure at military installations in Hawaii to support the IBCT operation and training. Proposed activities include land transactions and construction and use of vehicle wash facilities, training and qualification ranges, installation information infrastructure and facilities enhancements, virtual and live training facilities upgrades, motor pool and range control/maintenance facilities, Army airfield upgrades, an anti-armor course, and an ammunition storage area. The remaining non-IBCT units will also use these new facilities as well as existing infrastructure.

Alternatives: (1) Transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT with a range of supporting activities including new, additional, or modified ranges, facilities and infrastructure; (2) Transformation of the 2nd Brigade, 25th Infantry Division (Light) to an IBCT using existing facilities and infrastructure in Hawaii as they are now configured; (3) No Action (No. transformation to an IBCT in the near term).

Other alternatives that may be raised during the scoping process will be considered.

Publication of this NOI does not foreclose consideration of any courses of actions or possible decisions addressed by the Department of Army in its Draft Programmatic Environmental Impact Statement (PEIS) for Army Transformation, dated June 2001. No final decisions will be made regarding transformation in Alaska prior to completion and signature of the Record of Decision for the PEIS for Army Transformation.

Scoping Process: Federal, state, and local agencies and the public are invited to participate in the scoping process for the completion of this EIS. The scoping process will help the Army in identifying potential impacts to the quality of the human environment. Scoping meetings will be held at various locations on the islands of Oahu and Hawaii. Notification of the times and locations for the scoping meetings will be published in local newspapers. Written comments identifying potential impacts to be analyzed in the EIS will be accepted within 30 days of the scoping meetings. Written comments may be fowarded to Mr. Earl Nagasawa at the above address.

Dated: February 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupation Health), OASA (I&E).

[FR Doc. 02–5084 Filed 3–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 3, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 22, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.,

A0190–9 DAMO

SYSTEM NAME:

Absentee Case Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Personnel Control Facility, U.S. Army Desert Information Point, Building 1481, Fort Knox, KY 40121–5000.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active duty Army, U.S. Army Reserve on active duty or in active duty training status, and Army National Guard personnel on active duty, absent without authority from their place of duty, listed as absentee, and/or who have been designated as a deserter.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'individual's name, Social Security Number, grade'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records Locator Subsystem.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.'

* * * * *

A0190–9 DAMO

SYSTEM NAME:

Absentee Case Files.

SYSTEM LOCATION:

U.S. Army Personnel Control Facility, U.S. Army Desert Information Point, Building 1481, Fort Knox, KY 40121–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army, U.S. Army Reserve on active duty or in active duty training status, and Army National Guard personnel on active duty, absent without authority from their place of duty, listed as absentee, and/or who have been designated as a deserter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, grade, reports and records which document the individual's absence; notice of unauthorized absence from U.S. Army which constitutes the warrant for arrest; notice of return to military control or continued absence in hands of civil authorities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, Army Regulation 190–9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies; Army Regulation 630–10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings; and E.O. 9397 (SSN).

PURPOSE(S):

To enter data in the FBI National Crime Information Center 'wanted person' file; to ensure apprehension actions are initiated/terminated promptly and accurately; and to serve management purposes through examining causes of absenteeism and developing programs to deter unauthorized absences.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records Locator Subsystem.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and the record copy of the Arrest Warrant are maintained in the Official Military Personnel Files; verified desertion data are stored on the Deserter Verification Information System at the U.S. Army Deserter Information Point.

RETRIEVABILITY:

Manually, by name; automated records are retrieved by name, plus any numeric identifier such as date of birth, Social Security Number, or Army serial number.

SAFEGUARDS:

Access is limited to authorized individuals having a need-to-know. Records are stored in facilities manned 24 hours, 7 days a week. Additional controls which meet the physical, administrative, and technical safeguard requirements of Army Regulation 380–19, Information Systems Security, are in effect.

RETENTION AND DISPOSAL:

Automated records are erased when individual returns to military custody, is discharged, or dies. Paper or microform records remain a permanent part of the individual's Official Military Personnel File.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Indianapolis, IN 42649–5301.

Individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Indianapolis, IN 46249–5301.

Individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Unit commander, first sergeants, subjects, witnesses, military police, U.S. Army Criminal Investigation Command personnel and special agents, informants, Department of Defense, federal, state, and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may furnish pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 02–4986 Filed 3–01–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Cost Sharing Cooperative Agreement Applications

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of solicitation for cost sharing cooperative agreement applications.

SUMMARY: The Defense Logistics Agency (DLA) issued a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs). These centers help business firms market their goods and services to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. Notice of the issuance of this SCAA was published in the March 17, 1999 **Federal Register** (Volume 64, Number 51, page 13176). This solicitation governs the submission of applications for calendar years 1999, 2000, 2001, and 2002 and applies to all applications from all eligible entities, including Indian Economic Enterprises and Indian Tribal Organizations. The SCAA has subsequently been amended on March 15, 2000 and February 12, 2002. The current and applicable SCAA is available at the Internet Web site listed below.

Pursuant to Section ''I'' paragraph ''J'' of the SCAA, notice is hereby given that limited additional funds are anticipated to be available in order to accept applications for additional new programs. However, applications will only be accepted from eligible entities that propose programs that will provide service to areas that are not currently receiving service from an existing program. This provision prohibiting applications from new programs proposing to service areas currently receiving service from an existing program is absolute, and the provisions of Section V, paragraph D. of the SCAA do not apply should a new applicant propose to service an area currently receiving service from an existing program.

DATES: On-line submissions of applications for new programs will be available on or about March 20, 2002. The closing date for the submission of applications is April 26, 2002 (see Section IV. paragraph C. regarding timely applications). Applications received after April 26, 2002 will not be accepted.

The SCAA is currently available for review on the Internet Web site: *http://www.dla.mil/scaa/downloads.htm.* Printed copies are not available for distribution.

Eligible entities may only submit an application as outlined in Section IV of the SCAA. In order to comply with the electronic portion of the submission,

applicants must obtain a log in account and password from DLA. To obtain these, applicants must furnish the Grants Officer written evidence that they meet the criteria of an eligible entity as set forth in paragraph 19 of Section II of the SCAA. This information should be mailed or otherwise delivered to: HQ, Defense Logistics Agency, Small and Disadvantaged Business Utilization Office (DB, Room 1127), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information please contact Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Program Manager, DoD Procurement Technical Assistance Program.

[FR Doc. 02–5045 Filed 3–1–02; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center (DMDC), Department of Defense, the Administration for Children and Families (ACF), Department of Health and Human Services and State Public Assistance Agencies (SPAA) for Verification of Continued Eligibility for Public Assistance.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revise computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Department of Health and Human Services (DHHS) and the Department of Defense (DoD) that their records are being matched by computer. The purpose the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

DATES: This proposed action will become effective April 3, 2002, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DHHS and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by ACF and the SPAAs to identify individuals who may be ineligible for public assistance benefits. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all Federal personnel records with SPAA records of those individuals currently receiving public assistance under a Federal benefit program being administered by the State. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy, and would result in additional delay in the eventual recovery of the outstanding debts.

A copy of the computer matching agreement between DHHS and DoD is available upon request. Requests should be submitted to the address caption above or to the Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 19, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Among the Defense Manpower Data Center, the Department of Defense, the Administration for Children and Families Department of Health and Human Service and State Public Assistance Agencies for Verification of Continued Eligibility for Public Assistance

A. Participating Agencies

Participants in this computer matching program are the Department of Health and Human Services (HHS) and the Department of Defense (DoD). The DHHS is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

Upon the execution of this agreement, ACF will disclose public assistance records, obtained from those SPAAs participating in the matching program, to DMDC to identify any Federal personnel, employed, serving, or retired, who are also receiving public assistance under the Medicaid, Temporary Assistance for Needy Families, general assistance and Food Stamp Programs. After matching has been conducted, ACF will provide matched data to the SPAAs who will use this information to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action, as may be authorized by law and regulation.

C. Authority for Conducting the Match

The legal authority for conducting the matching program is contained in

section 1137 of the Social Security Act (42 U.S.C. 1320b–7).

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Federal, but not State, agencies must publish system notices for ''systems of records'' pursuant to subsection (e)(4) of the Privacy Act and must identify ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. The DoD system of records described below contains an appropriate routine use proviso, which permits disclosure of information by DMDC to ACF and the SPAAs.

2. DoD will use personal data from the record system identified as S322.10 DMDC, entitled ''Defense Manpower Data Center Base,'' last published in the **Federal Register** at 66 FR 29552, May 31, 2001.

3. DHHS will be disclosing to DMDC personal data it has collected from the SPAAs. No information will be disclosed from systems of records that ACF operates and maintains. DHHS will be disclosing to the SPAAs personal data it has received from DMDC. The DMDC supplied matched data will be disclosed by ACF pursuant to the DoD routine use.

E. Description of Computer Matching Program

ACF, as the source agency, will collect from the SPAAs electronic files containing the names and other personal identifying data of eligible public assistance beneficiaries. ACF will coordinate the input obtained from the SPAAs and will provide DMDC with similarly formatted electronic data files, which contain the names of individuals receiving public assistance benefits, and which can be processed as a single file. Upon receipt of the electronic files of SPAA beneficiaries, DMDC will perform a computer match using all nine digits of the SSN of the ACF/SPAA file against a DMDC computer database. The DMDC database consists of personnel records of non-postal Federal civilian employees and military members, both active and retired.

The ''hits'' or matches will be furnished by DMDC to ACF, who in turn, will disclose to the SPAAs any matched information pertaining to individuals receiving benefits from that State.

1. The electronic files provided by ACF and the SPAAs will contain data elements of the client's name, SSN, date of birth, address, sex, marital status, number of dependents, information regarding the specific public assistance benefit being received, and such other data as considered necessary and on no more than 10,000,000 public assistance beneficiaries.

2. The DMDC computer database file contains approximately 4.53 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.45 million records of active and retired non-postal Federal civilian employees.

3. DMDC will match the SSN on the ACF/SPAA file by computer against the DMDC database. Matching records, ''hits'' based on SSNs, will produce data elements of the individual's name; SSN; active or retired; if active, military service or employing agency, and current work or home address, and such.

F. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. By agreement between DHHS and DoD, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 02–4987 Filed 3–1–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance.

Frequency: Quarterly, Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 17,200.

Burden Hours: 41,925.

Abstract: The Lender's Interest and Special Allowance Request (Form 799) is used by approximately 4,300 lenders participating in the Title IV, PART B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5010 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: State Library Agencies Survey, 2000–2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 561.

Abstract: State library agencies (StLAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, direct services to the public, public service hours, type and size of collections, service and development transactions, staffing patterns, and income and expenditures.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5011 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study to Assess Funding, Accountability, and One-Stop Delivery Systems in Adult Education.

Frequency: One time only.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses 220,

Burden Hours: 272.

Abstract: This study is part of the National Assessment of Adult Education authorized by the Workforce Investment Act (WIA), Title II (otherwise known as AEFLA). Findings and recommendations will be used by Congress in considering reauthorization in 2003. OMB approval is requested for two data collection components: (1) A survey of state adult education directors; and (2) site visits to describe state and local implementation of AEFLA and the implications of one-stop service delivery on local adult education programs and providers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5012 Filed 3–1–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 5, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 3, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budge (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Department review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 27, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application Package for the Rural Education Achievement Program (REAP) Small, Rural School Achievement Program.

Abstract: Local Education Agencies (LEAs) will apply for funding under the REAP Small, Rural School Achievement Program. This collection consists of an additional form to the Spreadsheet and Instructions which will address the

second tier of the Department's strategy for completing the funding process. The additional form will serve as the application package for LEAs under the REAP Small, Rural Schools Achievement Program.

Additional Information: The Department of Education requests Emergency Clearance for the information collection entitle Application for the Small, Rural School Achievement Program because a normal clearance is likely to cause a statutory deadline to be missed. The statute requires the Department to make direct grant awards to all eligible LEAs by July 1. With an estimated 4,500 awards to be made by July 1, the Department needs a considerable amount of time to inform potential applicants of the availability of funds and the award process, and to conduct the funding process.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Response: 4,552.

Burden Hours: 3,000.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov.* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5123 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. Childcare for young children with disabilities and their families will be the topic of this FICC meeting. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on March 13, 2002 in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC, 20202.

DATE AND TIME: FICC Meeting: Thursday, March 14, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Departmental Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Dated: February 26, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5110 Filed 3–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No.DE–PS26–02NT41446 entitled ''Development of Technologies and Capabilities for Natural Gas Infrastructure Reliability.'' This solicitation supports the Natural Gas Infrastructure Reliability product line which is part of the Department of Energy's Strategic Center for Natural Gas. This solicitation competitively seeks cost-shared applications for energy research and development (R&D) related activities that promote the efficient and sound production and use of fossil fuels (coal, natural gas, and oil). The primary purpose of the solicitation is to maintain and enhance the integrity and reliability of the natural gas transmission and distribution pipeline infrastructure. Research directed specifically towards expansion of the pipeline and major references to expansion will be discouraged.

DATES: Potential applicants are required to submit a brief, not to exceed seven pages, pre-application. The deadline for submissions of pre-applications and comprehensive applications will be identified in the solicitation. No comprehensive application will be evaluated unless a pre-application has been received and considered by the DOE. The review process for the pre-

applications will be limited to a programmatic review that will result in encouraging or discouraging submission of a comprehensive application. However, discouraged applicants are not prohibited from submitting full applications. A response to the pre-applications will be communicated to the applicant within two weeks after the closing date for the pre-application. All pre-applications must be submitted through the Industry Interactive Procurement System (IIPS) system in accordance with the instructions in the solicitation. The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at http://e-center.doe.gov on or about March 1, 2002. The deadline for submission of pre-applications and comprehensive applications will be identified in the solicitation. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's website at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Dona G. Sheehan, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, E-mail Address: sheehan@netl.doe.gov, Telephone Number: 412/386–5918.

SUPPLEMENTARY INFORMATION: In an effort to determine the needs of the gas infrastructure industry, NETL sponsored visioning and road mapping workshops allowing representatives from natural gas organizations and industries to define and prioritize research directions necessary to maintain and expand the natural gas infrastructure. The input from these workshops has been summarized in a report entitled ''Pathways for Enhanced Integrity, Reliability and Deliverability'' and is publicly available on the NETL Website at *http://www.netl.doe.gov/scng/publications/naturalg.pdf.* Applicants are encouraged to review the information contained in this document.

To support the pipeline infrastructure, NETL is requesting R&D applications which will result in the development of technology which supports the current and future natural gas infrastructure. The solicitation will focus on research in the following areas: (1) Transmission systems, (2) distribution systems and (3) technologies which clearly affect both areas. Applicants may propose research in any area which supports the industries needs; however, the proposed work must address, but not necessarily limited to, research needs identified in the visioning and road mapping workshops. In addition to the proposed R&D effort, applicants will be required to include a discussion of the costs and benefits to ensure that the technology being developed has the potential to result in a useful commercial product which will be utilized by the natural gas infrastructure industry. DOE anticipates issuing cost-shared financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards will be made. Multiple awards are anticipated. Approximately $1.5 million of DOE funding is planned.

Applications submitted by, or on behalf of: (1) Another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management and Operating (M&O) contractor will not be eligible for an award under this solicitation. An application may include performance of work by a DOE M&O contractor but that work must not exceed 15% of the total contract value. If a project which includes National Laboratory participation is approved for funding, DOE intends to make an award to the applicant for its portion of the effort and to provide direct funding for the National Laboratories portion of the effort as a Field Work Proposal (FWP).

DOE has determined that a minimum cost share of 25 percent of the total project cost is required for this solicitation. Details of the cost sharing requirement and the specific funding levels will be contained in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on February 21, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–5067 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, April 4, 2002, 9 a.m.–5 p.m., Friday, April 5, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel/Hanford House, 802 George Washington Way, Richland, WA (509–946–7611).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, April 4, 2002

- Introduction of Draft Advice on the Tri-Party Agreement Draft Change Package for the Central Plateau Project
- Introduction of Draft Advice on the Hanford Institutional Controls Plan
- Discussion of Top-to-Bottom Review and Introduction of Draft Advice
- Discussion on FY03 and FY04 Budgets
- Overview of Hanford Exposure Scenario (aka Ad Hoc Task Force) Workshop and Introduction of Draft Advice on the Risk Framework for the Central Plateau

Friday, April 5, 2002

Adoption of the following pieces of draft advice:

- Tri-Party Agreement Draft Change Package for the Central Plateau Project
- Institutional Controls Plan
- Risk Framework for the Central Plateau Committee Updates
- Hanford Solid Waste Draft Environmental Impact Statement (EIS)

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on February 27, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5064 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 27, 2002, 1 p.m.–9 p.m.

ADDRESSES: Office of Los Alamos Site Operations, Room 100, 528 35th Street, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1–5 p.m.—Public Comment
—Recruitment/Membership
—Report from Chair—Groundwater Statement
—Report from Staff
—Report from DOE
—Report from Committees
5–6 p.m.—Dinner Break
6–9 p.m.—Update on Waste Removal at LANL
—Recommendations to DOE
—Public Comment
Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org*.

Issued at Washington, DC, on February 27, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5065 Filed 3–1–02; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 21, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Approve Minutes; Review Agenda
6:10 p.m.—DDFO's Comments; Action Items; Budget Update; ES&H Issues; Board Recommendation Status
6:30 p.m.—Ex-officio Comments
6:40 p.m—Public Comments and Questions
6:50 p.m.—Task Force and Subcommittee Reports

- Groundwater Operable Unit
- Budget, Finance & Administration
- Surface Water Operable Unit
- Community Concerns
- Waste Task Force
- Public Involvement

- Long Range Strategy/Stewardship
- Nomination and Membership

7:35 p.m.—Break

7:50 p.m.—Administrative Issues

- Review of Work Plan
- Review of Next Agenda
- Federal Coordinator Comments
- Retreat Plans

8:05 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on February 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5066 Filed 3–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–62–000]

California Electricity Oversight Board, Complainant, v. Sellers of Energy and Capacity Under Long-Term Contracts With the California Department of Water Resources, Respondents; Notice of Complaint

February 26, 2002.

Take notice that on February 25, 2002, the California Electricity Oversight Board (Complainant) filed a complaint against specified sellers of long term power contracts to the California Department of Water Resources (Respondents) alleging that the prices, terms, and conditions of such contracts are unjust and unreasonable and not in the public interest. Complainant alleges that Respondents obtained the prices, terms, and conditions in the contracts through the exercise of market power, in violation of the Federal Power Act, and that the prices, terms, and conditions are causing injury to the citizens and ratepayers of California and the State's economy.

Copies of this filing were served upon Respondents and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002 . Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5054 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–159–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

February 26, 2002.

Take notice that on February 15, 2002, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Effective November 1, 2001

Third Revised Sheet No. 39

Effective February 16, 2002

Original Sheet Nos. 1503–1999

DTI states that the purpose of this filing is to update the rates and fuel retention percentages shown in DTI's currently effective FERC Gas Tariff, Sheet No. 39, pertaining to overrun charges.

DTI states that a copy of its transmittal letter and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5059 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–94–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

February 26, 2002.

Take notice that on February 21, 2002, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP02–94–000 a request pursuant to Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211(b)) for authorization to construct and operate a delivery point located in Pinal County Arizona, under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''Rims'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

El Paso states that the new delivery point will permit the interruptible transportation and delivery of natural gas for Abbott Laboratories L.L.C. (Abbott Labs). Abbott Labs, it is said, utilizes natural gas to fuel boilers in its manufacturing and processing plant located in Pinal County, Arizona. Abbott Labs, it is further said, has requested natural gas service directly from El Paso for its manufacturing and processing plant which is currently served by Southwest Gas Corporation.

El Paso asserts that El Paso's environmental analysis supports the conclusion that the construction and operation of the proposed delivery point will not be a major Federal action significantly affecting the human environment.

El Paso states that the construction and operation of the Abbott Labs delivery point is not prohibited by El Paso's existing Tariff . El Paso states further that the estimated cost of the proposed facilities is $195,150 and that Abbott Labs has agreed to reimburse El Paso for the cost of the construction.

Any questions regarding the application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80904, phone: (719) 520–3788.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5055 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–6–002]

Enogex Inc.; Notice of Compliance Filing

February 26, 2002.

Take notice that on February 13, 2002, Enogex Inc. (Enogex) tendered for filing a copy of its fuel percentage calculation for 2002.

Enogex states that the purpose of its filing is to comply with the settlement in Docket Nos. PR01–6–000 and PR01–6–001, approved by the Commission by a letter order dated January 30, 2002, which requires Enogex to file its fuel percentage for 2002 within 30 days of the order accepting the settlement.

Enogex further states that it has served copies of this filing upon all parties in Docket No. PR01–6–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5058 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–60–000]

Public Utilities Commission of the State of California, Complainant, v. Sellers of Long Term Contracts to the California Department of Water Resources, Respondents; Notice of Complaint

February 25, 2002.

Take notice that on February 25, 2002, the Public Utilities Commission of the State of California (Complainant) submitted a complaint against specified sellers of long term contracts to the California Department of Water Resources (Respondents) alleging that the prices, terms, and conditions of such contracts are unjust and unreasonable and, to the extent applicable, not in the public interest. Complainant alleges that Respondents obtained the prices, terms, and conditions in the contracts through the exercise of market power, in violation of the Federal Power Act, and that Respondents' actions are causing injury to the citizens and ratepayers of California on whose behalf the CPUC is statutorily entitled to act.

Copies of this filing were served upon Respondents and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5053 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–52–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 26, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Florida Power & Light Company, Tampa Electric Company

[Docket No. EC02–52–000]

Take notice that on February 22, 2002, Florida Power & Light Company (FPL) and Tampa Electric Company (TECO) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act for a transfer from FPL to TECO of a 13.55 mile long transmission line located in Hillsborough County, Florida.

Comment Date: March 15, 2002

2. B.L. England Power LLC

[Docket No. EG02–80–000]

Take notice that on February 22, 2002, B.L. England Power LLC (BL England) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 finding that allowing the BL England facility to be an eligible facility is in the public interest; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

3. Deepwater Power LLC

[Docket No. EG02–81–000]

Take notice that on February 22, 2002, Deepwater Power LLC (Deepwater) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 finding that allowing the Deepwater facility to be an eligible facility is in the public interest; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

4. Keystone Power LLC

[Docket No. EG02–82–000]

Take notice that on February 22, 2002, Keystone Power LLC (Keystone) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 with respect to Keystone's purchase of the Atlantic City Electric Company interest in the Keystone facility; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

5. Conemaugh Power LLC

[Docket No. EG02–83–000]

Take notice that on February 22, 2002, Conemaugh Power LLC (Conemaugh) supplemented its application in the above-referenced docket by (i) submitting the order issued on February 20, 2002 by the New Jersey Board of Public Utilities under section 32(c) of the Public Utility Holding Company Act of 1935 with respect to Conemaugh's purchase of the Atlantic City Electric Company interest in the Conemaugh facility; and (ii) clarifying its statement regarding other leases associated with the facility.

Comment Date: March 19, 2002

6. Southeast Chicago Energy Project, LLC

[Docket No. EG02–97–000]

Take notice that on February 21, 2002, Southeast Chicago Energy Project, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of Exempt Wholesale Generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will own and sell electric energy from six combustion turbines with a combined generating capacity of 350 MW and certain limited interconnection facilities located in Calumet, Illinois.

Comment Date: March 19, 2002

7. Southern Company Services, Inc.

[Docket Nos. ER00–1608–001 and ER01–2166–001]

Take notice that on February 19, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies) made an informational filing regarding their intent to recover from Tenaska Alabama Partners, LP (Tenaska), pursuant to an interconnection agreement between Tenaska and Southern Companies, and from Duke Energy North American LLC (Duke), pursuant to an interconnection agreement between DENA and Southern Companies, Southern Companies' actually incurred costs associated with line outages that were necessary for Tenaska and DENA to interconnect certain of their generating facilities to Southern Companies' transmission system. In addition, Southern Companies filed supporting informational materials regarding their policies and procedures for assigning cost responsibility to interconnection customers for expenses related to transmission line outage.

Comment Date: March 12, 2002

8. San Diego Gas & Electric Company

[Docket No. ER02–635–001]

Take notice that on February 21, 2002, San Diego Gas & Electric (SDG&E) tendered for filing an errata related to its change in rates for the Transmission Revenue Balancing Account Adjustment and the Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff (TO Tariff). This charge was filed December 28, 2001 in Docket No. ER02–635–000. The effect of this rate change is to

increase rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-Controlled Grid owned by SDG&E. This errata does not change the rates submitted by SDG&E on December 28, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and other interested parties.

Comment Date: March 13, 2002.

9. Cinergy Services, Inc.

[Docket No. ER02–1047–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) and Louisville Gas & Electric Company requests a cancellation of Service Agreement No. 77, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 22, 2002.

Comment Date: March 13, 2002.

10. Cineregy Services, Inc.

[Docket No. ER02–1048–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Louisville Gas and Electric Company/ Kentucky Utilities Company.

Cinergy and FPL are requesting an effective date of February 22, 2002.

Comment Date: March 13, 2002.

11. Cinergy Services, Inc.

[Docket No. ER02–1049–000]

Take notice that on February 21, 2002, Cinergy Services, Inc. (Cinergy) and Kentucky Utilities Company, requests a cancellation of Service Agreement No. 73, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 22, 2002.

Comment Date: March 13, 2002.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER02–1050–000]

Take notice that on February 19, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Rainbow Energy Marketing Corporation (Customer). ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of February 4, 2002.

Comment Date: March 12, 2002.

13. Alliant Energy Corporate Services Inc.

[Docket No. ER02–1051–000]

Take notice that on February 19, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Village of Albany, Illinois (Customer). ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of January 21, 2002.

Comment Date: March 12, 2002.

14. West Georgia Generating Company, L.L.C.

[Docket No. ER02–1052–000]

Take notice that on February 20, 2002, West Georgia Generating Company, L.L.C. (West Georgia) tendered for filing a revised tariff sheet to reflect the correct name of the entity under the rate schedule and remove a restriction on West Georgia's ability to engage in transactions with the affiliate of the former owner of the facility. West Georgia also seeks to terminate the obsolete Codes of Conduct associated with the former owner. West Georgia requests that the tariff changes become effective upon the date of the filing, February 20, 2002.

Comment Date: March 13, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–1053–000]

Take notice that on February 21, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No.1 to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and the Western Area Power Administration Desert Southwest Region (WAPA). The ISO requests that the agreement be made effective as of January 18, 2002.

The ISO states that this filing has been served on the persons listed in the service list for Docket No. ER98–3708–000.

Comment Date: March 13, 2002.

16. NRG Northern Ohio Generating LLC, NRG Ashtabula Generating LLC, NRG Lake Shore Power LLC

[Docket No. ER02–1054–000, ER02–1055–000, and ER02–1056–000]

Take notice that on February 21, 2002, NRG Northern Ohio Generating LLC (NRG Northern Ohio), NRG Ashtabula Generating LLC and NRG Lake Shore Generating LLC (together the Applicants), limited liability corporations organized under the laws of the State of Delaware, filed under section 205 of the Federal Power Act, requests that for each of the Applicants the Commission (1) accept for filing proposed market-based FERC Rate Schedules; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under their appropriate FERC Rate Schedules; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment Date: March 13, 2002.

17. PJM Interconnection, L.L.C.

[Docket No. ER02–1058–000]

Take notice that on February 21, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following two executed agreements: (1) one network integration transmission service agreement for Reliant Energy Services, Inc. (Reliant); and (2) one network integration transmission service agreement for Allegheny Electric Cooperative, Inc. (Allegheny Electric).

PJM requested a waiver of the Commission's notice regulations to permit effective date of February 1 for the agreements, which is within 30 days of the date of this filing. Copies of this filing were served upon Reliant and Allegheny Electric, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: March 13, 2002.

18. WPS Resources Corporation.

[Docket No. ER02–1059–000]

Take notice that on February 21, 2002, WPS Resources Corporation (WPSR) submitted revised market-based rate tariffs for its marketing subsidiaries, including WPS Power Development, Inc., WPS Energy Services, Inc., Mid-American Power LLC, Sunbury Generation, LLC, WPS New England Generation, Inc. (formerly, PDI New England, Inc.), WPS Canada Generation, Inc. (formerly, PDI Canada, Inc.), WPS Westwood Generation, LLC and Combined Locks Energy Center, LLC. WPSR requests that the revised tariffs become effective on February 22, 2002, the day after this filing.

This filing has been served on the market-based rate customers of the WPSR subsidiaries.

Comment Date: March 13, 2002.

19. Duke Energy Southaven, LLC

[Docket No. ER02–1060–000]

Take notice that on February 21, 2002, Duke Energy Southaven, LLC (Duke Southaven) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act proposed revisions to its FERC Electric Tariff No. 1 (Tariff).

Duke Southaven requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 14, 2002, the date on which Duke Southaven commenced the sale of test energy. Duke Southaven commits to delay billing under its tariff until 60 days after the date this amendment was filed.

Comment Date: March 13, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5052 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–000, Idaho]

Atlanta Power Station, Notice of Meeting

February 26, 2002.

A telephone conference will be convened by staff of the Office of Energy Projects on March 18, 2002, at 1 p.m. eastern standard time. The purpose of the meeting is to discuss Section 18 prescriptions in the November 10, 1999, letter from the U.S. Department of the Interior, Fish and Wildlife Service.

Any person wishing to be included in the telephone conference should contact Gaylord W. Hoisington at (202) 219–2756 or e-mail at gaylord.hoisington@ferc.fed.us. Please notify Mr. Hoisington by March 12, 2002, if you want to be included in the telephone conference.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5057 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA02–2–000]

Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; Notice of Docket Designation

February 26, 2002.

On February 13, 2002, the Commission issued an order entitled ''Order Directing Staff Investigation.'' That order was issued under the caption ''Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices,'' but did not have a docket designation. The proceeding that the February 13th order initiated has now been designated as Docket No. PA02–2–000. The February 13, 2002 order is to be regarded as having been issued in this docket.

Public orders, notices, information requests, and other documents issued in Docket No. PA02–2–000 will be posted on the Commission's web site, *http://www.ferc.gov.* Parties responding to information requests issued in this proceeding may request privileged treatment pursuant to 18 CFR 388.112.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–5056 Filed 3–1–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–6]

Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* Under the Safe Drinking Water Act; Agency Information Collection: Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: Today's notice invites comment on the U.S. Environmental Protection Agency's (EPA's) proposed Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act (Lab QA Program) (Section I). EPA also plans to submit to the Office of Management and Budget (OMB) for review and approval an Information Collection Request (ICR) associated with information collections under the proposed Lab QA Program (Section II). EPA is requesting comments on specific aspects of the proposed Lab QA Program and the ICR. Finally, EPA solicits comments on its intention to seek an emergency clearance from OMB to begin collecting data from laboratories that are interested in participating in the Lab QA Program prior to OMB's final approval of the ICR.

DATES: The Agency requests comments on today's notice. Comments must be received or post-marked by midnight May 3, 2002. If EPA does not receive adverse comments on or before April 3, 2002 regarding EPA's request for an emergency clearance, the Agency intends to seek a 90-day emergency clearance from OMB to begin collecting data from laboratories that are interested in participating in the Lab QA Program.

ADDRESSES: Please send an original and three copies of your written comments and enclosures (including references) to the W–01–17 Comment Clerk, Water Docket (MC–4101), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Due to the uncertainty of mail delivery in the Washington, DC area, in order to ensure that all comments are received please send a separate copy of your comments

via electronic mail (e-mail) to Mary Ann Feige, EPA, Office of Ground Water and Drinking Water, *feige.maryann@epa.gov*, or mail to the attention of Mary Ann Feige, EPA, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., Room EB57, Washington, DC 20460. Please make certain to reference EPA ICR No. 2052.02 and OMB Control No. 2040–0229.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sharon Gonder at EPA by phone at (202) 564–5256 or by email at *gonder.sharon@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2052.02. For technical inquiries, contact Mary Ann Feige, EPA, Office of Ground Water and Drinking Water, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268, fax number, (513) 569–7191, e-mail address, *feige.maryann@epa.gov*.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Individuals who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–01–17. Comments and data will also be accepted on disks in WP5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Availability of Docket

The record for this notice has been established under docket number W–01–17, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, EPA Waterside Mall, 401 M Street, SW., Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Section I: Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium Under the Safe Drinking Water Act

In September 2000, the Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee (Committee) signed an Agreement in Principle (Agreement) (65 FR 83015, Dec. 29, 2000) (EPA, 2000) with consensus recommendations for two future drinking water regulations: The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants and Disinfection Byproducts Rule. The LT2ESWTR is to address risk from microbial pathogens, specifically *Cryptosporidium*, and the Stage 2 DBPR is to address risk from disinfection byproducts. The Committee recommended that the LT2ESWTR require public water systems (PWSs) to monitor their source water for *Cryptosporidium* using EPA Method 1622 or EPA Method 1623. Additional *Cryptosporidium* treatment requirements for PWSs would be based on the source water *Cryptosporidium* levels. EPA intends to take into account the Committee's advice and recommendations embodied in the Agreement when developing the regulations.

To support *Cryptosporidium* monitoring under the LT2ESWTR, the Committee Agreement recommended that ''compliance schedules for the LT2ESWTR * * * be tied to the availability of sufficient analytical capacity at approved laboratories for all large and medium-size affected systems to initiate *Cryptosporidium* and E.coli monitoring * * * '' (65 FR 83015, Dec. 29, 2000) (EPA, 2000). Further, the Agreement recommended that *Cryptosporidium* monitoring by large and medium systems begin within six months following rule promulgation. Given the time necessary for EPA to approve a sufficient number of laboratories to assure adequate capacity for LT2ESWTR monitoring, EPA would need to begin laboratory evaluation prior to promulgation of the rule in order to accommodate such an implementation schedule.

Another factor that warrants initiation of the Lab QA Program prior to promulgation of the LT2ESWTR is grandfathering of monitoring data. The Agreement recommends that systems with ''historical'' *Cryptosporidium* data that are equivalent to data that would be collected under the LT2ESWTR be afforded the opportunity to use those ''historical'' (grandfathered) data in lieu of collecting new data under LT2ESWTR. EPA intends to propose such grandfathering provisions in the LT2ESWTR. If EPA indicates that laboratories meet the criteria in the Lab QA Program described today prior to finalizing the LT2ESWTR, systems could develop monitoring data prior to the LT2ESWTR in anticipation of using it as grandfathered data.

EPA's Office of Ground Water and Drinking Water plans to request from OMB an emergency clearance that would enable expeditious implementation of a voluntary Lab QA Program to support *Cryptosporidium* monitoring under the LT2ESWTR. As such, the Agency could begin to evaluate laboratories that can reliably measure for *Cryptosporidium* using EPA Method 1622 and Method 1623. During the effective period of the emergency clearance, EPA intends to submit to OMB for review and approval a final ICR in order to continue data collection for the Lab QA Program.

As part of today's notice, EPA is inviting comment on the Lab QA Program. Under the Lab QA Program, EPA would evaluate labs on a case-by-case basis through evaluating their capacity and competency to reliably measure for the occurrence of *Cryptosporidium* in surface water using EPA Method 1622 or EPA Method 1623. The intent of this notice is not to propose establishing the Lab QA Program through a rulemaking. Rather, the criteria described in section I.C. are intended to provide guidance to laboratories that are interested in participating in the Lab QA Program.

EPA has not yet proposed rulemaking on use of such ''historical'' data nor on the methods themselves under the LT2ESWTR. As noted above, EPA intends to propose allowing systems to use equivalent ''historical'' data in lieu of collecting new data. EPA anticipates the data generated by labs which meet the evaluation criteria would be very high quality, thus increasing the likelihood that such data would warrant consideration as acceptable ''grandfathered'' data. However, lab evaluation would not guarantee that data generated will be acceptable as ''grandfathered'' data, nor would failure to meet evaluation criteria necessarily preclude use of ''grandfathered'' data. For these reasons, EPA is not establishing the Lab QA Program through rulemaking, but rather as a discretionary and voluntary program under the Safe Drinking Water Act, section 1442 (42 USC 300j–1(a)).

A. What Is the Purpose of the Laboratory Quality Assurance Evaluation Program?

The purpose of the Lab QA Program is to identify laboratories that can

reliably measure for the occurrence of *Cryptosporidium* in surface water. Existing laboratory certification programs do not include *Cryptosporidium* analysis. This program is designed to assess and confirm the capability of laboratories to perform *Cryptosporidium* analyses. The program will assess whether laboratories meet the recommended personnel and laboratory criteria in today's notice. This evaluation program is voluntary for laboratories. In the LT2ESWTR, however, EPA intends to require systems to use approved (or certified) laboratories when conducting *Cryptosporidium* monitoring under the LT2ESWTR.

B. Why Has EPA Selected Methods 1622 and 1623 as the Basis for Determining the Data Quality of Laboratories That Measure for *Cryptosporidium*?

EPA Method 1622 and EPA Method 1623 were developed as improved alternatives to the ICR Protozoan Method (EPA, 1996). EPA validated Method 1622 for the determination of *Cryptosporidium* in ambient water in August 1998 and distributed an interlaboratory validated draft method in January 1999. In addition, EPA validated Method 1623 for the simultaneous determination of *Cryptosporidium* (and *Giardia*) in ambient water in February 1999 and distributed a validated draft method in April 1999.

In April 2001, EPA revised and updated Method 1622 (EPA–821–R–01–026) (EPA, 2001a) and Method 1623 (EPA–821–R–01–025) (EPA, 2001b) based on the following: laboratory feedback, the development of equivalent filters and antibodies for use with the methods, and method performance data generated during the ICR Supplemental Surveys (EPA, 2001e). The results of these studies are documented in the Method 1622 interlaboratory validation study report (EPA–821–R–01–027) (EPA, 2001c) and the Method 1623 interlaboratory validation study report (EPA–821–R–01–028) (EPA, 2001d).

C. What Criteria Should I Use To Determine if My Laboratory Should Apply?

A laboratory that is interested in participating in the Lab QA Program currently should be operating in accordance with its QA plan (developed by the laboratory) for *Cryptosporidium* analyses. In addition, an interested laboratory should demonstrate its capacity and competency to analyze *Cryptosporidium* using the following recommended criteria:

1. Recommended Personnel Criteria

Principal Analyst/Supervisor (one per laboratory) should have:

- BS/BA in microbiology or closely related field.
- A minimum of one year of continuous bench experience with *Cryptosporidium* and immunofluorescent assay (IFA) microscopy.
- A minimum of six months experience using EPA Method 1622 and/or EPA Method 1623.
- A minimum of 100 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 50 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method (EPA, 1996)) for the specific analytical procedure they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed principal analyst/supervisor.

Other Analysts (no minimum number of analysts per laboratory) should have:

- Two years of college (or equivalent) in microbiology or closely related field.
- A minimum of six months of continuous bench experience with *Cryptosporidium* and IFA microscopy.
- A minimum of three months experience using EPA Method 1622 and/or EPA Method 1623.
- A minimum of 50 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 25 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method) for the specific analytical procedures they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed other analysts.

Technician(s) (no minimum number of technicians per laboratory) should have:

- Three months experience with the specific parts of the procedure they will be performing.
- A minimum of 50 samples analyzed using EPA Method 1622 and/or EPA Method 1623 (minimum 25 samples if the person was an analyst approved to conduct analysis for the ICR Protozoan Method) for the specific analytical procedures they will be using.
- Submit to EPA, along with the application package, resumes detailing the qualifications of the laboratory's proposed technician(s).

2. Recommended Laboratory Criteria

- Appropriate instrumentation as described in EPA Methods 1622 and 1623 (EPA, 2001a,b).
- Equipment and supplies as described in EPA Methods 1622 and 1623 (EPA 2001a, 2001b).
- Detailed laboratory standard operating procedures for each version of the method that the laboratory will use to conduct the *Cryptosporidium* analyses.
- Laboratory should provide a current copy of the table of contents of their laboratory's quality assurance plan for protozoa analyses.
- EPA Method 1622 or EPA Method 1623 initial demonstration of capability (IDC) data, which include precision and recovery (IPR) test results and matrix spike/matrix spike duplicate (MS/MSD) test results for *Cryptosporidium.* EPA intends to evaluate the IPR and MS/MSD results against the performance acceptance criteria in the April 2001 version of EPA Method 1622 or EPA Method 1623 (EPA, 2001a, 2001b).

D. How Can I Obtain an Application Package?

After the OMB clearance described above, EPA plans to make applications available on EPA's website at *www.epa.gov/safewater/cryptolabapproval.html.* Completed applications should be sent to: EPA's Laboratory Quality Assurance Evaluation Program Coordinator, c/o Dyncorp I&ET, Inc., 6101 Stevenson Avenue, Alexandria, VA 22304–3540. If a laboratory does not have access to the Internet, the laboratory may contact Dyncorp I&ET, Inc. to request an application package.

E. If I Demonstrate My Laboratory's Capacity and Competency According to the Personnel and Laboratory Criteria, What Do I Do Next?

After the laboratory submits to EPA an application package including supporting documentation, EPA intends to conduct the following steps to complete the process:

1. Upon receipt of a complete package, EPA contacts the laboratory for follow-up information and to schedule participation in the performance testing program.

2. EPA sends initial proficiency testing (IPT) samples to the laboratory (unless the laboratory has already successfully analyzed such samples under EPA's Protozoan PE program). IPT samples packets consist of eight spiked samples shipped to the laboratory within a standard matrix.

3. The laboratory analyzes IPT samples and submits data to EPA.

4. EPA conducts an on-site evaluation and data audit.

5. The laboratory analyzes ongoing proficiency testing (OPT) samples three

times per year and submits the data to EPA. OPT sample packets consist of three spiked samples shipped to the laboratory within a standard matrix.

6. EPA contacts laboratories by letter within 60 days of their laboratory on-site evaluation to confirm whether the laboratory has demonstrated its capacity and competency for participation in the program.

F. My Laboratory Has Already Submitted Initial Demonstration of Capability (IDC) and Initial Performance Testing (IPT) Data As Part of the EPA Protozoan Performance Evaluation (PE) Program. Do I Have To Perform This Demonstration Testing Again?

No. If a laboratory currently participates in the EPA Protozoan PE Program and acceptable IDC and IPT data have already been submitted (for the version of the method that the laboratory will use to conduct *Cryptosporidium* analyses), EPA would not expect the laboratory to repeat IDC and IPT analyses.

Section II: Paperwork Reduction Act

The information collection requirements in this notice have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 2052.02) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; EPA (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *auby.susan@epamail.epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Since the EPA would solicit information in application packages, including supporting documentation, analytical data, and other pertinent information from laboratories that are interested in participating in the voluntary Lab QA Program, the Agency is required to submit an ICR to OMB for review and approval. Entities potentially affected by this action include public and private laboratories that wish to be evaluated to determine if they can reliably measure for the occurrence of *Cryptosporidium* in surface waters that are used for drinking water sources using EPA Method 1622 or Method 1623.

The burden estimate for the Lab QA Program information collection includes all the burden hours and costs required for gathering information, and developing and maintaining records associated with the Lab QA Program. The annual public reporting and recordkeeping burden for this collection of information is estimated for a total of 60 respondents and an average 78 hours per response for a total of 4,676 hours at a cost of $123,650. This estimate assumes that laboratories participating in the Lab QA program have the necessary equipment needed to conduct the analyses. Therefore, there are no start-up costs. The estimated total annual capital costs is $0.00. The estimated Operation and Maintenance (O&M) costs is $133,880.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; EPA (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after March 4, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by April 3, 2002. The final ICR approval notice will respond to any OMB or public comments on the information collection requirements contained in today's notice.

References

EPA. 1996. ICR Microbial Laboratory Manual. Office of Research and Development. EPA/600/R–95/178. April 1996.

EPA. 2000. Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee Agreement in Principle. **Federal Register**. Vol. 65, pp. 83015–83024. December 29, 2000.

EPA. 2001a. EPA Method 1622: Cryptosporidium in Water by Filtration/IMS/FA. Office of Water. Washington, DC 20460. EPA–821–R–01–026. April 2001.

EPA. 2001b. EPA Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA. Office of Water. Washington, DC 20460. EPA–821–R–01–025. April 2001.

EPA. 2001c . Interlaboratory Validation Study Results for Cryptosporidium Precision and Recovery for EPA Method 1622. Office of Water. Washington, DC 20460. EPA–821–R–01–027. April 2001.

EPA. 2001d. Interlaboratory Validation Study Results for the Determination of *Cryptosporidium* and *Giardia* Using EPA Method 1623. Office of Water. Washington, DC 20460. EPA–821–R–01–028. April 2001.

EPA. 2001e. Implementation and Results of the Information Collection Rule Supplemental Surveys. Office of Water. Washington, DC 20460. EPA–815–R–01–003. February 2001.

Dated: February 25, 2002.

Diane C. Regas,

Acting Assistant Administrator, Office of Water.

[FR Doc. 02–5078 Filed 3–1–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy of the Export-Import Bank of the United States

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance $35 million of equipment on behalf of U.S. exporters to an automotive crankshaft finisher in Mexico. The U.S. exports will enable the Mexican buyer to increase finished automotive crankshaft output by approximately 700,000 crankshafts per year. Some of this new production will be exported to the United States.

Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW, Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helen S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–4976 Filed 3–1–02; 8:45 am]

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy of the Export-Import Bank of the United States

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance $12.5 million of equipment, and other goods and services on behalf of U.S. exporters to a buyer in South Africa. The U.S. exports will enable the South African company to increase phosphoric acid output by 330,000 tons per year, of which approximately 257,000 tons may be converted into granular phosphate fertilizer. This new production may be exported to Australia, Brazil, India, and to countries in Africa.

Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–4975 Filed 3–1–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1402–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1402–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 6, 2002:

Allen, Anderson, Barber, Bourbon, Butler, Chautauqua, Coffey, Cowley, Crawford, Douglas, Elk, Franklin, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Osage, Sumner, Wilson, and Woodson for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5039 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–Kansas–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1402–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 15, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5040 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1403–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1403–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 13, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5041 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1403–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1403–DR), dated February 6, 2002, and related determinations.

EFFECTIVE DATE: February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 6, 2002:

Cedar, Knox, Lewis and Marion Counties for Individual and Public Assistance.
Barton, Clark, Daviess, DeKalb, Ralls and Scotland Counties for Individual Assistance.
Chariton, Clinton, Henry, Macon, Monroe, St. Clair, Shelby and Vernon Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5042 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 1, 2002:

Alfalfa, Beckham, Blaine, Caddo, Custer, Dewey, Grant, Kay, Logan, Major, Noble, Oklahoma, Pawnee, Roger Mills, and Washington Counties for Categories C through G under Public Assistance (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance at 75 percent Federal funding under Public Assistance and Individual Assistance).
Grady, Greer, Jackson, and Kiowa for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5037 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 11, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5038 Filed 3–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Dennis Frank Doelitzsch, Marion, Illinois; to retain voting shares of Midwest Community Bancshares, Inc., Marion, Illinois, and thereby indirectly retain voting shares of The Bank of Marion, Marion, Illinois, and The Egyptian State Bank, Carrier Mills, Illinois.

2. John Layton Harlin, Gainesville, Missouri; to retain voting shares of Century Bancshares, Inc., Gainesville, Missouri, and thereby indirectly retain voting shares of Century Bank of the Ozarks, Gainesville, Missouri.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Thelen Family Limited Liability Limited Partnership 2, Baxter, Minnesota; to acquire voting shares of American Bancorporation of Minnesota, Inc., Brainerd, Minnesota, and thereby indirectly acquire voting shares of American National Bank of Minnesota, Brainerd, Minnesota.

Board of Governors of the Federal Reserve System, February 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5095 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Docking Bancshares, Inc., Arkansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Union State Bank, Arkansas City, Kansas.

Board of Governors of the Federal Reserve System, February 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5096 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 14, 2002. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace level of the Martin Building. **For security purposes, anyone planning to attend the meeting should pre-register no later than Tuesday, March 12 by sending their name and affiliation to cca-cac@frb.gov. Attendees must also present a photo identification to enter the building.**

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the various consumer financial services laws, and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Mortgage Disclosure Act - Discussion of issues related to recent amendments to Regulation C, which implements the Home Mortgage Disclosure Act.

Equal Credit Opportunity Act - Discussion of issues raised by proposed rules in the review of Regulation B, which implements the Equal Credit Opportunity Act.

Community Reinvestment Act - Discussion of issues identified in connection with the current review of Regulation BB, which implements the Community Reinvestment Act.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, February 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–5051 Filed 3–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through June 30, 2005, the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Gramm-Leach-Bliley Act Privacy Rule (''GLBA Rule'' or ''Rule''). That clearance expires on June 30, 2002.

DATES: Comments must be submitted on or before May 3, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''GLBA Rule: Paperwork Comment.'' Comments in electronic form should be sent to: *GLBpaperwork@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Loretta Garrison, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Room S–4429, 601 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3043.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. (44 U.S.C. 3502(3), 5 CFR 1320.3(c)). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the GLBA Rule, 16 CFR Part 313 (OMB Control Number 3084–0121).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly label ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *GLBpaperwork@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii)).

The GLBA Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLBA, 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping.

Estimated annual hours burden: Estimating the paperwork burden of the GLBA Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a federal financial regulatory agency. Under section 505(a)((7) of the GLBA, the Commission has jurisdiction over the entities that are not specifically subject to another agency's jurisdiction (*see* sections 505(a)(1)–(6) of the GLBA). Because of the types of disclosures at issue and the requirements of the regulations, the frequency of responses, and the volume of respondents, cannot be determined with certainty.

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the GLBA Rule. In addition, some entities may use highly automated means of providing the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Start-up hours and labor costs for new entities: While staff believes its prior estimate of the number of entities subject to the Rule (100,000) remains reasonable, it also estimates that, on average, no more than approximately 5,000 new entities each year will address the GLBA Rule for the first time. The prior amount recognized the newness of the Rule and the many existing business entities that would be subject to it for the first time. The estimates regarding already established entities are reflected in the second table below, and retain the larger population estimate as the base for further calculations.[1]

Event	Number of hours/costs per event and labor category * (per respondent)	Approx. number of respondents	Approx. annual hours (millions)	Approx. total costs (millions)
Reviewing internal policies and developing GLBA-implementing instructions **.	Managerial/professional time: 20 hrs/$1,000	5,000	0.1	$5
Creating actual disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	Clerical: 5 hrs/$50; skilled labor: 10 hrs/$200	5,000	.075	1.25
Disseminating initial disclosure (including opt out notices).	Clerical: 15 hrs/$150; skilled labor: 10 hrs/$200.	5,000	.125	1.75
Total	.....	.....	.300	8.00

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were $50 for managerial/professional time (e.g., compliance evaluation and/or planning), $20 for skilled technical time (e.g., designing and producing notices, reviewing and updating information systems), and $10 for clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). Labor cost totals reflect solely that of the commercial entities affected. Staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of document and/or electronic disclosures).

Burden hours and costs for established entities: Burden for entities already familiar with the Rule would predictably be less up entities since start-up costs, such as crafting a privacy policy,

[1] While the existing population affected would increase with the inflow of new entrants, staff will retain its estimate of overall population affected, allowing, in part, for businesses that will close in any given year, and the difficulty of establishing a more precise estimate.

are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Number of hours/costs per event and labor category * (per respondent)	Approx. Number of respondents	Approx. annual hours (millions)	Approx. total costs (millions)
Reviewing GLBA-implementing policies and practices.	Managerial/professional time: 4 hrs/$200	70,000	.28	$14.0
Disseminating annual disclosure	Clerical: 15 hrs/$150; skilled labor: 5 hrs/$100.	70,000	1.40	17.5
Changes to privacy policies and related disclosures.	Clerical: 15 hrs/$150; skilled: 5 hrs/$100	1,000	.02	.25
Total	.....	.....	1.70	31.75

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were $50 for managerial/professional time (e.g., compliance evaluation and/or planning), $20 for skilled technical time (e.g., designing and producing notices, reviewing and updating information systems), and $10 for clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). Consumers have a continuing right to opt-out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt-out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents is based on the following assumptions: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

As calculated above, the average PRA burden for all affected entities in a given year would be 1,000,000 hours and $19,875,000.

Estimated Capital/Other Non-Labor Costs Burden: Staff estimates that the capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.,* computers with word processing programs, typewriters, copying machines, mailing capabilities.) Most likely, only entities that already have on-line capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–5128 Filed 3–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—These regulations and informed consent procedures are associated with Federally funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—*Annual Responses:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—Burden Estimate for Record-keeping Requirement—*Number of Record-keepers:* 4,000; *Average Burden per Record-keeper:* 2.5 hours; *Total Burden for Record-keeping:* 10,000 hours. *Total Burden:* 50,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov,* or mail to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: February 22, 2002.

Kerry Weems,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–4967 Filed 3–1–02; 8:45 am]

BILLING CODE 4190–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. A Study of Stroke Post-Acute Care and Outcomes—New—The Office of the Assistant Secretary for Planning and Evaluation proposes a study to compare risk-adjusted quality indicators related to care provided across the three post-acute care (PAC) settings. The three settings are skilled nursing facilities, home health agencies and inpatient rehabilitation facilities. Stroke was chosen as a tracer condition for this study because it accounts for approximately 10 percent of all Medicare PAC admissions and because stroke patients are treated in all three

PAC settings. *Respondents:* Individuals, Business or other for-profit; Facility Burden Information—*Number of Respondents:* 74; *Average Burden per Facility:* 3.78 hours; *Facility Burden:* 280 hours—Patient Burden Information—*Number of Respondents for Informed Consent:* 1347; *Average Burden per Response:* 10 minutes; *Burden for Informed Consent:* 225 hours—*Number of Respondents for Admission Interview:* 1051; *Average Burden per Response:* 32.8 minutes; *Burden for Admission Interview:* 575 hours—*Number of Respondents for 90-day Follow-up Interview:* 919; *Average Burden per Response:* 28.4 minutes; *Burden for 90-day Follow-up Interview:* 435 hours—*Total Burden:* 1,515 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: February 21, 2002.

Kerry Weems,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02–4966 Filed 3–1–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicaid Program Budget Request; *Form No.:* CMS–37 (OMB# 0938–101); *Use:* The Medicaid Program Budget Request is prepared by the State agencies and is used by CMS for (1) developing National Medicaid Budget estimates; (2) qualification of budget assumptions; (3) the issuance of quarterly Medicaid grant awards, and (4) collection of projected State receipts of donations and taxes; *Affected Public*: State, local, or tribal gov't; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 8064.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–37, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4968 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10060]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request; Title of Information Collection; Form No.: CMS–10060 (OMB# 0938–NEW); *Use;* This project completion report derives from the Quality Improvement System for Managed Care (QISMC) Standards and Guidelines as required by the Balanced Budget Act of 1997 (as amended by the Balanced Budget Refinement Act of 1999) and the related regations, 42 CFR 422.152. These regulations established QISMC as a requirement for Medicare + Choice (M+C) Organizations by requiring improved health outcomes for enrolled beneficiaries. The provisions of QISMC specify that M+C organizations will implement and evaluate quality improvement projects. The form submitted herein will permit M+C organizations to report their completed projects to CMS in a standardized fashion for evaluation by CMS of the M+C organization's compliance with regulatory provisions. This form will improve consistency and reliability in the CMS evaluation process as well as provide a standardized structure for public use and review; *Frequency:* Annually; *Affected Public:* Business or

other for-profit, not-for-profit institutions; *Number of Respondents:* 155; *Total Annual Responses:* 310; *Total Annual Hours:* 620–1240 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 21, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4969 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1771]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR Section 424.103; *Form No.:* CMS–1771 (OMB# 0938–0023); *Use:* Payment, by Medicare, may be made for certain Part A inpatient hospital services and Part B outpatient services provided in a nonparticipating U.S. or foreign hospital, when services are necessary to prevent the death or serious impairment to the health of an individual. This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim:

Frequency: On occasion;

Affected Public: Business or other for profit;

Number of Respondents: 2,000;

Total Annual Responses: 2,000;

Total Annual Hours: 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–1771, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4970 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–843 and CMS–841, 842, 844–853]

Agency Information Collection Activities: Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

T*ype of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Power Wheel Chair Certificate of Medical Necessity; *Form No.:* CMS–843; *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. This form contains medical information necessary to make an appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal Government; *Number of Respondents:* 2,700; *Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity (CMS–841, 842, 844–853); *Form No.:* CMS–841,842, 844–853 (OMB# 0938–0679); *Use:* This

information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information necessary to make an appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.13 to 1.7 million.

As the result of the town hall meetings held last year at OMB, CMS received a large volume of comments and agreed to most of the proposed changes. Proposed changes included:

Proposed Changes to CMS Form 843 Durable Medical Equipment Certificates of Medical Necessity (CMNs)

1. For Form 843 the Disclosure Statement Will Change

• The address for suggestions will read, ''CMS, 7500 Security Boulevard, N2–14–26, Baltimore, Maryland 21244–1850 and the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.''

• The timeframe to complete the CMN will remain at 15 minutes.

2. For Form 843 the Health Care Financing Administration (HCFA) Would Change to Centers for Medicaid & Medicare Services (CMS)

• Top left of all forms will say ''U.S. Department of Health & Human Services, Centers for Medicaid & Medicare Services.''

• Bottom left will say ''FORM CMS__*form number goes here.*__''

3. Verbiage to the Instructions on the Back Page for HCFA Form 843

• Has been changed from ''ordering'' physician to ''treating'' physician.

4. DMERC Form Number Will Need Changed

• DMERC form number for Motorized Wheelchairs will change to 02.04A

5. The Estimated Length of Need Changed for Form 843

• In Section B the estimated length of need was changed to ''the estimated length of need (# of months starting from the Initial Date in Section A).''

Rationale: The old verbiage had physicians completing this section at the time they were completing the form that allowed for errors to occur by the physician inadvertently changing the estimate.

• The back page of these forms need to be revised by adding ''For Revised CMN or Recertification CMNs, the estimated length of need must be expressed as the number of months starting from the Initial Date in Section A.''

6. The Date of the Form Changed for Forms 841–854

• The date in the lower left corner, which indicates a revision without substantive changes will need to be revised to indicate when the changes may occur.

7. Form 843 Motorized Wheelchairs

• Change verbiage of question 7 to read, ''Is the patient able to operate any type of manual wheelchair.''

Rationale: The current verbiage, which requires the physician to respond in the affirmative to a negative question results in numerous errors in completion of the form.

Proposed Changes to CMS Forms 841–854 Durable Medical Equipment Certificates of Medical Necessity (CMNs)

1. For Forms 841–854 the Disclosure Statement Will Change

• The address for suggestions will read, ''CMS, 7500 Security Boulevard, N2–14–26, Baltimore, Maryland 21244–1850 and the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.''

• The timeframe to complete the CMN will remain at 15 minutes.

2. For Forms 841–854 the Health Care Financing Administration (HCFA) Would Change to Centers for Medicaid & Medicare Services (CMS)

• Top left of all forms will say ''U.S. Department of Health & Human Services, Centers for Medicaid & Medicare Services.''

• Bottom left will say ''FORM CMS__*form number goes here.*__''

3. Verbiage to the Instructions on the Back Page for HCFA Forms 841–854

• Has been changed from ''ordering'' physician to ''treating'' physician.

4. 5 DMERC Form Numbers Will Need Changed

• DMERC form number on the top right of the Hospital Bed CMN will change to 01.03A

• DMERC form number for Motorized Wheelchairs will change to 02.04A

• DMERC form number for Infusion Pumps will change to 09.03

• DMERC form number for Parenteral Nutrition will change to 10.03A

• DMERC form number for Enteral Nutrition will change to 10.03B

5. The Estimated Length of Need Changed for Forms 841–854

• In Section B the estimated length of need was changed to ''the estimated length of need (# of months starting from the Initial Date in Section A).''

Rationale: The old verbiage had physicians completing this section at the time they were completing the form that allowed for errors to occur by the physician inadvertently changing the estimate.

• The back page of these forms need to be revised by adding ''For Revised CMN or Recertification CMNs, the estimated length of need must be expressed as the number of months starting from the Initial Date in Section A.''

6. The Date of the Form Changed for Forms 841–854

• The date in the lower left corner, which indicates a revision without substantive changes will need to be revised to indicate when the changes may occur.

7. Form 841 Hospital Beds

• Questions 1 and 3 of section B will be combined.

Rationale: To simplify the questions on the form.

• Section B answer section was changed to reflect that question 3 is reserved for further use.

8. Form 842 Support Surfaces

• The title of the CMN would change to Air-Fluidized Beds and omit question 12.

Rationale: To reflect the elimination of a CMN requirement for Group I and II support surfaces.

• The header in Section B needs revised to say ''Answer questions 13–22 for air-fluidized beds''.

9. Form 843 Motorized Wheelchairs

• Change verbiage of question 7 to read, ''Is the patient able to operate any type of manual wheelchair.''

Rationale: The current verbiage, which requires the physician to respond in the affirmative to a negative question results in numerous errors in completion of the form.

10. Form 844 Manual Wheelchairs

• To be consistent with other CMNs, a box was added under the Section B header which says ''Questions 6 and 7 reserved for other or future use.''

11. Form 847 Osteogenesis Stimulators

• A box under the Section B header would be added which says ''Questions 1–5 reserved for other or future use''.

• The header under Section B will also be revised to say ''Answer question 6–8 for *nonspinal electrical* osteogenesis stimulator. Answer question 9–11 for *spinal electrical* osteogenesis stimulator. Answer question 6 and 12 for *ultrasonic* osteogenesis stimulator.''

• Change verbiage of question 6a to read, '' If the patient has had a fracture, do two sets of multiple-view radiographs taken at least 90 days apart (prior to starting treatment with the device) show that there has been no clinically significant fracture healing?'' Rationale: This language is consistent with the new national coverage decision.

• Add question 12 which would state ''Has the patient failed at least one open surgical intervention for the treatment of the fracture?'' The answer box contains the choices ''Y N D''. Rationale: To accommodate ultrasonic stimulators.

12. Form 851 External Infusion Pumps

• Change the answers to question 4 to read 1 2 3 4

• Change the verbiage to question 4 to read, ''1—Intravenous; 2—Intra-arterial; 3—Epidural; 4—Subcutaneous''

Rationale: At least one drug for which an infusion pump is covered is administered intra-arterially.

• Eliminate question 5 in section B.

Rationale: It will eliminate confusion and redundancy that is already captured in question 6.

• Change the verbiage of question 7 to remove the extra spaces between the words

''oral/transdermal'' and ''narcotic''

Rationale: Correct typographical error.

• In Section B, question 7, the word ''permanent'' was omitted.

Rationale: To clarify the question.

• A box would be added under the Section B Header which says ''Question 5 reserved for other or future use''.

13. Form 852 Parenteral Nutrition

• Change the answers to question 5 to read 1 3 4 7.

• Change the verbiage to question 5 to read, ''Circle the number for the route of administration. 2, 5, 6—Reserved for other or future use.

1—Central Line; 3—Hemodialysis Access Line; 4—Peritoneal Catheter;

7—Peripherally Inserted Catheter (PIC).''

Rationale: Some parenteral dialysis solutions are administered via a beneficiary's peritoneal catheter. Use of this route of administration must be indicated on the CMN so that a coverage determination can be made accordingly.

14. Form 853 Enteral Nutrition

• Question 11 in section B would be changed to read ''Prescribed calories per day for each product?''

Rationale: To clarify that the number of calories ordered per day are not the number of calories the patient may or may not consume.

• Section B, question 7 the term ''permanent'' has been omitted.

Rationale: The DMERC can screen for the criterion by looking at the value entered by the physician in the Estimated Length of Need field.

• Section B, question 15 will be made to a multiple-choice question.

Rationale: To be consistent with the policy to supply additional information for the use of the pump.

• Section B, answer to question 13 would be changed to say ''Does not apply'' in replace of ''Oral''.

Rationale: To address situations when someone submits a CMN for orally administered enteral nutrients.

However, due to the Health Insurance Portability & Accountability Act Administrative Simplification implications, extensive system changes, cost implications and time limitations needed for educational efforts, CMS will continue to use the current CMNs. In addition, to fully evaluate the impact of CMNs before making a reasoned and rational decision regarding the future of CMNs and the disposition of the proposed technical changes, CMS has contracted with Tri-Centurion, LLC to perform a detailed study of CMNs. Tri-Centurion is objectively evaluating the usage and results of CMNs and will present CMS with recommendations in October of 2002 that will assist in the ultimate disposition of each CMN.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMN's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2002.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4971 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–193]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* ''Important Message from Medicare'' Title XVII Section 1866(a)(1)(M), 42 CFR 466.78, 489.20, 489.34, 489.27, 411.404, 412.42, 417.440 and Section 422.620; *Form No.:* CMS–R–193 (OMB# 0938–0692); *Use:* Hospital participating in the Medicare program have agreed to distribute the ''Important Message from Medicare'' to beneficiaries during the course of their hospital stay and inform them of their impending charges. Receiving this information will provide all Medicare beneficiaries with some ability to participate and/or initiate discussions concerning actions that may affect their Medicare coverage, payment, and appeal rights in response to hospital notification their care will no longer continue; *Frequency:* Other: Distribution; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 5,985; *Total Annual Responses:* 11,500,000; *Total Annual Hours:* 632,500.

Since the last version of form CMS–R–193, ''Important Message from Medicare'' (IM), was published, we have had several conversations with representatives of the hospital and managed care industry about how to make the IM a less burdensome, but equally effective, process. Most recently (this month), we consulted with representatives of the American Hospital Association, and the New Jersey Hospital Association, as well as with the Kaiser M+C organization staff to alert them to our plan to introduce a much less burdensome IM form and methodology. There has been general, unofficial agreement that the new approach would be viewed as a welcome improvement by the industry (although, we realize that some issues may remain). Because, we previously submitted this collection for OMB clearance, reduced burden on respondents and consulted with the industry, we believe that further review at the agency level is not justified. Therefore, we are proceeding directly with clearance through OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 21, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–4972 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Oklahoma State Plan Amendment 99–09

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 10, 2002, at 10 a.m., in Conference Room 1113; 1301 Young Street; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma State Plan Amendment (SPA) 99–09.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Oklahoma's State Plan Amendment (SPA) 99–09. Oklahoma submitted SPA 99–09 on April 26, 1999.

The SPA would provide for coverage and payment of certain services as targeted case management services for children who receive medical services pursuant to an Individualized Education Program, Individualized Family Service Plan, or an Individualized Health Service Plan. Under the SPA, providers of school-based medical services would be the only qualified providers of these services, which would be diagnostic in nature, and payment would be limited to the provider of an underlying medical service.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issues are: (1) Whether the proposed covered services are in compliance with the statutory definition of case management services at section 1915(g) of the Act; (2) whether the payment rates are consistent with ''efficiency, economy, and quality of care'' in light of their high levels and apparent duplication of provider services already included in the basic provider payment; (3) whether the proposed restriction on payment for case management services to providers furnishing other covered medical services violates the freedom of choice requirements of section 1923(a)(23)(A) of the Act; and (4) whether the proposed payment for services required under an individualized health services plan (IHSP), for which educational programs are legally liable to pay, is consistent with requirements at section 1902(a)(25) of the Act to pursue payment from all liable third parties.

As explained in the initial disapproval determination, CMS concluded that the State had not demonstrated that the proposed covered services were within the scope of section 1915(g) of the Act. The proposed services would consist of activities such as needs assessment, service planning, service coordination and monitoring, service plan review, and crisis assistance planning and were described by the State as generally diagnostic in nature. In contrast, case management services are described at section 1915(g) as directed at ''gaining access to needed medical, social, educational, and other services.'' In addition, CMS found that the services described in the amendment were inherent within the services performed by medical professionals in order to properly diagnose and treat their patients, and are integral to the services routinely paid through the basic fee-for-service rate paid to the providers. In light of the fact that the rates already being paid under the Oklahoma approved plan for school-based medical services were already higher than community rates and those paid generally, CMS therefore concluded that the proposed payments were not consistent with efficiency, economy and quality of care, as required by section 1902(a)(30)(A) because they effectively were duplicate payments for services covered by the basic payment rate. Furthermore, even if one were to assume that the proposed services were distinct from services included in the basic payment rate, CMS found that the proposed limitation of such payments to the provider furnishing the underlying services was inconsistent with beneficiary freedom-of-choice of provider, as required by section 1902(a)(23)(A) of the Act. And, finally, CMS concluded that the proposed specific authority to pay for services required under an IHSP was inconsistent with Medicaid requirements to pursue liable third party payers, under section 1902(a)(25) of the Act and implementing regulations at 42 CFR 433.136. CMS noted that educational programs are legally liable to fund IHSP activities, and thus should be required to pay primary to Medicaid.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Oklahoma SPA 99–09.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Michael Fogarty, Chief Executive Officer, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Boulevard, Suite 124, Oklahoma City, Oklahoma 73105–3413.

Dear Mr. Fogarty:

I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendment (SPA) 99–09. Oklahoma submitted SPA 99–09 on April 26, 1999.

The issues are: (1) Whether the proposed covered services are in compliance with the statutory definition of case management services at section 1915(g) of the Social Security Act (the Act); (2) whether the payment rates are

consistent with ''efficiency, economy and quality of care'' in light of their high levels and apparent duplication of provider services already included in the basic provider payment; (3) whether the proposed restriction on payment for case management services to providers furnishing other covered medical services violates the freedom-of-choice requirements of section 1923(a)(23)(A) of the Act; and (4) whether the proposed payment for services required under an individualized health services plan (IHSP), for which educational programs are legally liable to pay, is consistent with requirements at section 1902(a)(25) of the Act to pursue payment from all liable third parties.

As explained in the initial disapproval determination, CMS concluded that the State had not demonstrated that the proposed covered services were within the scope of section 1915(g) of the Act. The proposed services would consist of activities such as needs assessment, service planning, service coordination and monitoring, service plan review, and crisis assistance planning and were described by the State as generally diagnostic in nature. In contrast, case management services are described at section 1915(g) as directed at ''gaining access to needed medical, social educational and other services.''

In addition, CMS found that the services described in the amendment were inherent within the services performed by medical professionals in order to properly diagnose and treat their patients, and are integral to the services routinely paid through the basic fee-for-service rate paid to the providers. In light of the fact that the rates already being paid under the Oklahoma approved plan for school-based medical services were already higher than community rates and those paid generally, CMS therefore concluded that the proposed payments were not consistent with efficiency, economy and quality of care, as required by section 1902(a)(30)(A) because they effectively were duplicate payments for services covered by the basic payment rate. Furthermore, even if one were to assume that the proposed services were distinct from services included in the basic payment rate, CMS found that the proposed limitation of such payments to the provider furnishing the underlying services was inconsistent with beneficiary freedom-of-choice of provider, as required by section 1902(a)(23)(A) of the Act. And, finally, CMS concluded that the proposed specific authority to pay for services required under an IHSP was inconsistent with Medicaid requirements to pursue liable third party payers, under section 1902(a)(25) of the Act and implementing regulations at 42 CFR 433.136. CMS noted that educational programs are legally liable to fund IHSP activities, and thus should be required to pay primary to Medicaid.

Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Oklahoma SPA 99–09.

I am scheduling a hearing on your request for reconsideration to be held April 10, 2002, at 10 a.m., in Conference Room 1113; 1301 Young Street; Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR Section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: February 21, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–4973 Filed 3–1–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS–UP, EHS–UP&HSGS 2002–03]

Fiscal Year 2002 Discretionary Announcement for Head Start-University Partnerships Research Projects, Early Head Start-University Partnerships Research Projects, and Head Start Graduate Student Research Grants; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications for research by university faculty or other nonprofit institutions (Priority Areas 1.01 and 1.02) and doctoral level graduate students (Priority Area 1.03) in partnership with Head Start programs.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) and Office of Planning, Research and Evaluation (OPRE) announce the availability of funds for three initiatives: Priority Area 1.01: Head Start-University Partnerships for research activities to develop and test models that use child outcomes to support continuous program improvement in local Head Start programs; Priority Area 1.02: Early Head Start-University Partnerships for research activities to support the development of infant-toddler mental health; Priority Area 1.03: Graduate Student Research Grants to support field-initiated research activities.

DATES: The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone), May 3, 2002. Applications received after 5 p.m. on the deadline date will be classified as late.

ADDRESSES: Mail applications to: Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102.

Hand delivered, courier or overnight delivery applications are accepted during the normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date.

All packages should be clearly labeled as follows:

Application for Head Start-University Partnerships, or

Application for Early Head Start-University Partnerships, or

Application for Head Start Graduate Student Grants, as appropriate.

FOR FURTHER INFORMATION CONTACT: The Head Start Research Support Technical Assistance Team (1–877) 663–0250, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: *hsr@xtria.com.*

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, *you must send a post card, call or e-mail with the following information: the name, address, telephone and fax number, e-mail address of the principal investigator, and the name of the university or non-profit institution at least four weeks prior to the submission deadline date to:* Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102. (1–877) 663–0250.

E-mail *hsr@xtria.com.*

Part I. Purpose and Background

A. Purpose

The purpose of this announcement is to announce the availability of funds for three initiatives: Priority Area 1.01: Head Start-University Partnerships for research activities to develop and test models that use child outcomes to support continuous program improvement in local Head Start programs; Priority Area 1.02: Early Head Start-University Partnerships for research activities to support the development of infant-toddler mental health; Priority Area 1.03: Graduate Student Research Grants to support field-initiated research activities.

B. Background

Priority 1.01: Head Start-University Partnerships

In 2001, Head Start marked the sixth year of implementing its system of Program Performance Measures. From initial planning in 1995 to the ongoing data collection on a second national cohort of Head Start children that began in fall 2000, Head Start has made dramatic progress in developing an outcome-oriented accountability system. This approach combines nationally representative data on programs, families, and children with program-level reporting and monitoring and is based on a consensus-driven set of criteria for program accountability.

Specifically, the Program Performance Measures were developed in accordance with the recommendations of the Advisory Committee on Head Start Quality and Expansion, the mandate of section 641A(b) of the Head Start Act (42 USC 9831 *et seq.*) as reauthorized in 1994, and the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). In fall 1997, Head Start launched the Family and Child Experiences Survey (FACES), a study with a nationally representative sample of 3200 children and families in 40 Head Start programs. FACES describes the characteristics, experiences and outcomes for children and families served by Head Start, and also observes the relationships among family, staff, and program characteristics and child outcomes. Continuing with a second nationally representative sample in fall 2000, FACES now provides Head Start with the ability to examine all facets of key outcomes and children's school readiness on an ongoing basis. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/faces/faces_intro.html.*

The reauthorization of Head Start in 1998 further specified child outcomes that local programs should use in their self-assessments and that should be reviewed as part of the monitoring process. In two information memoranda (ACYF–IM–00–03, January 31, 2000 and ACYF–IM–00–18, August 10, 2000) Head Start outlined the legislative changes and provided guidance on the use of child outcomes in program self-assessments. As part of the second memorandum, the Head Start Bureau provided a Child Outcomes Framework of eight Domains based on the Head Start Program Performance Standards: Language Development, Literacy, Mathematics, Science, Creative Arts, Social and Emotional Development, Approaches Toward Learning, and Physical Health and Development. Programs are expected to ensure that their system for ongoing assessment of children includes collection of data in each of these Domains. In addition, because they are legislatively mandated, programs must gather and analyze data on certain specific Domain Elements or Indicators of progress in language, literacy, and numeracy skills. For further information see: *http://www.hskids-tmsc.org/publications/im00/im00_18.htm.*

Under these new accountability requirements, local programs must develop a system to analyze data on child outcomes that centers on patterns of progress for groups of children over the course of the Head Start year. At a minimum, data analysis should compare progress when children enter the program, at a mid-point, and when they complete the program year. In most programs, analysis of child outcomes should be based on data from all children enrolled, but approaches that include representative sampling of children can also be considered. Child assessment should provide objective, accurate, consistent and credible information, including ensuring that tools are appropriate in terms of age, language, and cultural background. Grantees should fully include children with identified disabilities in the child assessment system, with appropriate accommodation of the assessment tool(s). Training and oversight for personnel who administer assessments, record progress, and analyze and report on data are key to ensure quality and usefulness. Strategies for incorporating data on patterns of child outcomes into overall program self-assessment and reporting are also addressed in the guidance.

These requirements call for programs to develop, refine and maintain systems which meet requirements both for individualizing services to meet child and family needs, and for providing information for improving services. The overall goal of the child assessment initiative is to create improved learning environments for children served by Head Start. Through the National Leadership Conference held in December 2000, and a number of subsequent leadership and training and technical assistance conferences, the Head Start Bureau has further specified its expectations for grantees.

This new initiative creates an opportunity for building model partnerships between program staff and researchers based in universities and other non-profit research institutions. Grantees are experts on the available strengths and needs of their families and communities, as well as the particular histories of their programs. Grantees can usually benefit from technical expertise in all aspects of the initiative, from selection of assessment tools appropriate for their curriculum, methods for administering assessments, methods for measuring classroom quality, approaches for data entry and management, techniques for data analysis, and of course, training of staff who will be responsible for each phase. Such partnerships necessitate that researchers become familiar with the goals, approaches, and existing systems of grantee self-assessment and child assessment, and build on these to develop logic models or theories of change. They also require that the technical experts encourage professional development of program personnel to become increasingly adept at managing

the system on their own. The successful partnership will be able to provide research-based evidence that the intervention is using information on child outcomes to improve the early learning environments for Head Start children.

The lessons learned from model partnerships can then be disseminated through training and technical assistance, both through the Head Start network and by other means. Examples of products expected from these partnerships include, but are not limited to: Methodological approaches for sampling, assessment and analysis at the local program level; plans for reporting data to teachers, parents, and management staff; data management systems; integrated curricular and assessment approaches; professional development approaches including coursework and training materials; and plans for disseminating information to the broader Head Start and child development communities.

Cooperative Agreements

For Priority Area 1.01 ACYF is utilizing a cooperative agreement mechanism, a funding mechanism that allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative agreement. At a minimum, however, the following roles and responsibilities will characterize the Research Partnerships:

1. Responsibilities of the Grantee

The Grantee

Conducts a local intervention and research project designed to develop, evaluate, refine and assist in dissemination of models to support continuous program improvement through use of child outcome measures.

Cooperates with one or more local Head Start programs in the design, implementation, and evaluation of the intervention.

Participates as a member of the Head Start-University Partnerships Research Consortium with other researchers, program partners, and Federal staff.

2. Responsibilities of the Federal Staff

Federal Staff

Provide guidance in the development of the final study design, including suggestions for possible cross-site measures.

Participate as members of the Research Consortium or any policy, steering, or other working groups established at the Research Consortium level to facilitate accomplishment of the project goals.

Facilitate communication and cooperation among the Research Consortium members.

Provide logistical support to facilitate meetings of the Research Consortium.

Priority Area 1.02: Early Head Start-University Partnerships

In recognition of the importance of the first three years of life, the 1994 Head Start Reauthorization legislation expanded Head Start to serve pregnant women and families with infants and toddlers. From initial funding in 1995 to the 664 programs in operation today, Early Head Start continues the legacy of Head Start in providing comprehensive services to low-income children, families and communities. While programs are flexibly designed to provide services in response to the needs of families in the community, all programs are required to provide home visits, child development, health and nutrition services for young children and pregnant women and to develop family and community partnerships.

Early Head Start also continues the long-standing commitment of Head Start programs to supporting the social and emotional well-being of children. However, programs serving infants and toddlers often struggle to understand the emotional and mental health needs of very young children and their families and how to address these needs. In fact, the relatively young (but growing) field of infant mental health has only recently begun to shed light on the importance of assessing and addressing these needs as well as providing guidance through empirically validated practice. In response to questions from program staff and members of the technical assistance network and at the urging of the Early Head Start Technical Work Group, in October 2000 the Administration on Children, Youth and Families held a national meeting, the Infant Mental Health Forum. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/imh/imh_intro.html.* The primary goals of the Forum were to address the role of Early Head Start and the Migrant Head Start program along with their community child care partners in promoting infant mental health in all children, preventing problems in at-risk populations, and accessing treatment for those with identified needs. The Forum allowed for the sharing of information from leaders in the field of infant mental health and the sharing of promising practices from four Early Head Start programs.

One of the challenges of the Infant Mental Health Forum was to come to a common definition of the term ''infant mental health.'' The term itself causes many to feel unease as it links the suffering, maladjustment and stigma associated with mental health to the innocence and newness of infancy. However, others advocate using the term because of the inclusion of the mental health professions as well as an acknowledgement of the suffering that infants can experience. Charles Zeanah, a keynote speaker at the Forum used the following definition: ''Infant mental health may be defined as the state of emotional and social competence in young children who are developing appropriately within the interrelated contexts of biology, relationship, and culture.'' The definition stresses the developmental appropriateness of behaviors and the relationship context of understanding behaviors and intervention.

The participants in the Forum identified a rationale for addressing the mental health of young children and their parents, principles to guide the work, and suggested action steps in order for programs to be able to more fully address the needs of young children and their families. The forum participants stressed the need to addresses issues of cultural competence, adequacy of available screening and assessment tools, as well as populations with special needs. Several areas of need were highlighted, including program guidance, public awareness, public policy, professional development, reflective supervision, cross-disciplinary collaboration, financing, and research and evaluation. In response to those suggestions, the Head Start Bureau has commissioned the Early Head Start National Resource Center to engage in consensus building, training and dissemination. This announcement builds on the suggestion to conduct research at demonstration sites to identify interventions that are effective in promoting infant mental health and to better understand what works for whom, how and why.

The Early Head Start Research and Evaluation Project has also provided information on the needs of the children and families served as well as areas in which the program is effective. For further information see *http://www.acf.dhhs.gov/programs/core/ongoing_research/ehs/ehs—intro.html.* When children were two years old,

Early Head Start children were functioning significantly better across a range of domains including cognitive, language and social-emotional than children in a randomly assigned control group. There were also significant impacts on parents. For instance, Early Head Start mothers report lower levels of parenting stress and family conflict, read to their children more, provide more enriched home environments, and seem to use less harsh discipline techniques. From observations of parent-child interactions, there is some indication that Early Head Start mothers provide more optimal levels of support and sensitivity, although no differences were observed in child behaviors. However, there was no indication that Early Head Start made a difference in rates of maternal or paternal depression, the one mental illness assessed. Furthermore, although approximately half of the mothers entering Early Head Start scored above the ''at-risk for depression'' cutoff on a measure of depressive symptoms, Early Head Start families were not more likely to be accessing mental health services than the control group (both approximately 17%). So, while programs are not affecting depression or improving access to mental health services, they may bolster the parent-child relationship and help protect children from the problems associated with parental depression.

Building on the needs identified both by practitioners in Early Head Start and the Early Head Start Research and Evaluation Project, and at the suggestion of the Infant Mental Health Forum participants, this announcement will support the identification of empirically-based interventions that are enhancements to Early Head Start programs, designed to promote the mental health of young children and their families. Each partnership team of one or more Early Head Start grantees and a research organization will identify or further develop a particular, self-selected approach toward enhancing program practices, based on the needs of the population served, which they will then implement along with an evaluation. However, the evaluation shall include aspects of the intervention delivery (services delivered) and program context (structures and supports necessary to implement the intervention) as well as outcomes for children and families and associations between services and outcomes. The evaluation design should be responsive to the nature of the intervention, the state of development of the intervention, the program context, and other factors. Possible designs include (but are not limited to) change over time (pre to post testing), quasi-experimental methods (e.g., non-randomized comparison group), or random assignment. As part of the evaluation, assessment tools that are comfortable (with training) for staff to use and that provide information that is useful for planning and referral must be identified. Staff training may be needed on use of the assessment tools as well as a broader training in the understanding of mental health disorders to aid in recognition of possible problems. During the assessment and implementation process there will certainly be families who need additional and specialized treatments. Partners should also identify protocols for helping those families who need additional services access those services. The ultimate goal for this work is to disseminate identified interventions and measures through training and technical assistance.

Cooperative Agreements

For Priority Area 1.02 ACYF is utilizing a cooperative agreement mechanism, a funding mechanism that allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative agreement. At a minimum, however, the following roles and responsibilities will characterize the Research Partnerships:

1. Responsibilities of the Grantee

The Grantee

Conducts a local intervention and research project designed to implement, evaluate, refine and assist in dissemination of interventions to support the mental health of infants/toddlers and their families.

Uses common assessment battery to be determined by Early Head Start University Partnerships Research Consortium (consisting of Research Grantees, program partners, and Federal staff). Grantees are also encouraged to use site-specific measures as well.

Cooperates with one or more local Early Head Start programs in the design, implementation, and evaluation of the intervention.

Participates as a member of the Early Head Start University Partnerships Research Consortium with other researchers, program partners, and Federal staff.

2. Responsibilities of the Federal Staff

Federal Staff

Provide guidance in the development of the final study design, including suggestions for possible cross-site measures.

Participate as members of the Consortium or any policy, steering, or other working groups established by the consortium to facilitate accomplishment of the project goals.

Facilitate communication and cooperation among the Consortium members.

Provide logistical support to facilitate meetings of the Consortium.

Priority Area 1.03: Head Start Graduate Student Grants

Since 1991, the Head Start Bureau has explicitly supported the relationship between established Head Start researchers and their graduate students by awarding research grants, on behalf of specific graduate students, to conduct research in Head Start communities. As many previously funded Head Start graduate students have continued to make significant contributions to the early childhood research field as they have pursued their careers, this funding mechanism is an important research capacity-building effort. Mentor-student relationships will help foster the intellectual and professional development of the next generation of researchers who will advance the scientific knowledge base needed to improve services for Head Start children and families.

To ensure that future research is responsive to the changing needs of low-income families, graduate students need strong and positive role models. Therefore, Head Start's support of the partnership between students and their mentors is essential. The unique partnership that is forged between mentor and student, within the Head Start research context, serves as a model for the establishment of other partnerships within the community (*e.g.,* researcher-Head Start staff, researcher-family). This foundation helps foster the skills necessary to build a graduate student's trajectory of successful partnership-building and contributions to the scientific community. Within this nurturing and supportive relationship, young researchers are empowered to become autonomous researchers, learning both theory as well as the process of interacting with the various members and relevant organizations within their communities. In an ever-changing, dynamic society, graduate student researchers need to be flexible in

adapting to the changing needs of the diverse populations and communities. The mentoring relationship serves to support graduate students as they actively engage in this learning process, preparing them to be exemplary and responsible research scientists in the community.

Thus, the goals of the Head Start Graduate Student Research Grant program can be summarized as follows:

1. Provide direct support for graduate students as a way of encouraging the conduct of research with Head Start populations, thus contributing to the knowledge base about the best approaches for delivering services to diverse, low-income families and their children;

2. Promote mentor-student relationships which support students' graduate training and professional development as young researchers engaged in policy-relevant, applied research;

3. Emphasize the importance of developing true working partnerships with Head Start programs and other relevant entities within the community, thereby fostering skills necessary to build a student's trajectory of successful partnership-building and contributions to the scientific community; and

4. Support the active communication, networking and collaboration among graduate students, their mentors and other prominent researchers in the field, both during their graduate training, as well as into the early stages of their research careers.

While the specific topics addressed under these Graduate Student Research Grants are intended to be field-initiated, applicants who address issues of both local and national significance will be most likely to succeed. Some illustrative examples of such topics include, but are not limited to the areas of school readiness, children's mental health, and strengthening fatherhood and healthy marriages in Head Start.

Unlike the first two priority areas of this announcement, awards for Priority Area 1.03 will be funded as research grants rather than as cooperative agreements.

Part II. Priority Areas

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

CFDA: 93.600

Priority Area 1.01: Head Start-University Partnerships Research Projects

Eligible Applicants: Universities, four-year colleges, and non-profit institutions on behalf of researchers who hold a doctoral degree or equivalent in their respective fields. Faith-based organizations are also eligible to apply.

Additional Requirements

- The principal investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.
- The proposed intervention plan must be responsive to the goal of supporting continuous program improvement through use of child outcome data.
- The proposed evaluation plan should specify which measures of implementation quality and standardized assessments of child development outcomes are to be used.
- The applicant must apply the University's or nonprofit institution's off-campus research rates for indirect costs.
- The applicant must enter into a partnership with a Head Start program for the purposes of conducting the research.
- The application must contain a letter from the Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.
- The principal investigator must agree to attend two meetings each year in Washington, DC, including Head Start's National Research Conference in the summer of 2004.
- The budget should reflect travel funds for such purposes.
- Contact information, including an e-mail address, for the principal investigator must be included in the application.

Project Duration: The announcement is soliciting applications for project periods of up to four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation of cooperative agreements funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through fourth 12-month budget periods.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

Priority Area 1.02 Early Head Start-University Partnership Research Projects

Eligible Applicants: Universities, four-year colleges, and non-profit institutions on behalf of researchers who hold a doctoral degree or equivalent in their respective fields. Faith-based organizations are also eligible to apply.

Additional Requirements

1. The principal investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

2. The proposed intervention plan must be responsive to the goal of supporting the development of infant-toddler mental health in Early Head Start programs. The proposal should address the following intervention questions: What is the theoretical justification for the intervention? Is the intervention universal or selective? If selective, how will participants be identified? What is expected to be the preliminary evidence that the intervention is successful? What are the expected outcomes (benefits) for children and families? What are the mediating and moderating variables that are expected to influence these outcomes (logic model or theory of change)? How will the mediating and moderating variables and outcomes be measured? How will the age of child, gender, disability and other key child characteristics as well as family characteristics such as language and culture be addressed?

3. The proposal should specify the plan to measure implementation quality. The proposal should address how the following questions regarding intervention delivery will be assessed: How does the intervention deviate from existing procedures in the site? What are the specific services received by the child/family? Who gets what, from whom, and how much? To what extent is the intervention individualized? Who is most and least likely to participate? How are specific services linked with child and family outcomes? What are the barriers to implementation and how are challenges resolved?

4. The proposal should specify how the intervention will be documented. The proposal should address how the following will be assessed: To what extent can procedures be documented and manualized? What are the structures and supports necessary to implement the intervention? What is the level of education, training and supervision that is required of intervention staff? What are key activities that are conducted to include or gain support from community stakeholders, program administers, policy councils, program staff including teachers, home visitors and others, as well as parents and families? What are contextual variables that might influence how the intervention is implemented (*e.g.*, community factors such as culture, levels of poverty, available resources, etc.).

5. The proposal should specify what assessments of child outcomes are to be used and address how program staff will be trained to administer assessments.

6 .The applicant must apply the University's or nonprofit institution's off-campus research rates for indirect costs.

7. The applicant must enter into a partnership with an Early Head Start program for the purposes of conducting the research.

8. The application must contain a letter from the Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.

9. The principal investigator must agree to attend two meetings each year in Washington, DC, including Head Start's National Research Conference in the summer of 2004.

10. The budget should reflect travel funds for such purposes.

11. Contact information, including an e-mail address, for the principal investigator must be included in the application.

Project Duration: The announcement is soliciting applications for project periods of up to four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation of cooperative agreements funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through fourth 12-month budget periods.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

Priority Area 1.03 Head Start Graduate Student Grants

Eligible Applicants: Institutions of higher education on behalf of doctoral-level graduate students. Doctoral students must have completed their Master's Degree or equivalent in that field and submitted formal notification to ACYF by August 15, 2002. Faith-based organizations are also eligible to apply.

To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. Although the faculty mentor is listed as the Principal Investigator, this grant is intended for dissertation research for an individual student. Information about both the graduate student and the student's faculty mentor is required as part of this application. Any resultant grant award is not transferable to another student. The award may not be divided between two or more students.

Additional Requirements

- A university faculty member must serve as a mentor to the graduate student; this faculty member is listed as the ''Principal Investigator.'' The application must include a letter from this faculty member stating that s/he has reviewed and approved the application, the status of the project as dissertation research, the student's status in the doctoral program, and a description of how the faculty member will regularly monitor the student's work.
- The research project must be an independent study conducted by the individual graduate student or well-defined portions of a larger study currently being conducted by a faculty member. The graduate student must have primary responsibility for the study described in the application.
- The graduate student must enter into a partnership with a Head Start or Early Head Start program for the purposes of conducting the research.
- The application must contain (A) a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and (B) a letter certifying that the application has been reviewed and approved by the Policy Council.
- The graduate student applicant must agree to attend two meetings each year of the grant. The first meeting consists of the annual meeting for all Head Start Graduate Students. This grantee meeting is typically scheduled during the Summer or Fall of each year and is held in Washington, DC. The second meeting each year consists of the Biennial Head Start National Research Conference in Washington, DC (in June or July 2004) or the biennial meeting of the Society for Research in Child Development-SRCD (in April, 2003). The budget should reflect travel funds for the graduate student for each of these 4 meetings.
- Given the strong emphasis that is placed on supporting the mentor-student relationship, the faculty mentors are strongly encouraged to attend and participate in the activities of the annual grantee meeting for all Head Start Graduate Students. The budget should reflect travel funds for such purposes, as appropriate. However, if the faculty mentor does plan to attend the annual Graduate Student grantee meeting, but will utilize another source of travel funds, such arrangements should be noted in the application.
- Due to the small amount of the grant, the applicant is strongly encouraged to waive indirect costs.
- Contact information, including an e-mail address, for both the graduate student applicant and faculty mentor must be included in the application.
- The graduate student must write the application.

Project Duration: The announcement for priority area 1.03 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the University is applying, expects to receive his/her degree by the end of the first one-year budget period, the applicant should request a one-year project period only. A second year budget-period will not be granted if the student has graduated by the end of the first year. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share will range between $10,000–$20,000 for the first 12-month budget period or a maximum of $40,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that between 5 and 10 projects will be funded. It is unlikely that any individual university will be funded for more than one graduate student research grant if there are at least 10 applications from different institutions that qualify for support.

Part III. General Instructions for All Priority Areas

Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, using a comprehensive review of the current literature, justify how the research questions and the findings will add new knowledge to the field and specifically how the project will improve services for children and families.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the *proportion of data collection expected to be completed*. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Additional Information

Following are requests for additional information that need to be included in the application.

Staff and Position Data. Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles.

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan. Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Budget and Budget Justification. Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF cooperative agreement or grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that

budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, cooperative agreement or grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the cooperative agreement or grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the cooperative agreement or grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self explanatory]

Part IV. Competitive Criteria for Reviewers

A. Criteria for Priority Area 1.01: Head Start-University Partnerships

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 20 Points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the intervention and for its evaluation, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products.

2. Approach 45 Points

- The extent to which the intervention is adequately described, responsive to the key questions outlined in the background section above, and represents a research-based, cost effective model that meets the goal of using child outcomes data to support program improvement.
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes in the comprehensive domains of school readiness are the major focus of the study.
- The extent to which the planned research specifies the measures to be used, their psychometric properties, and the proposed analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study and the population to be studied.

• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the art.
• The extent to which the analytic techniques are appropriate for the question under consideration.
• The extent to which the proposed sample size is sufficient for the study.
• The scope of the project is reasonable for the funds available for these cooperative agreements.
• The extent to which the planned approach reflects sufficient input from and partnership with the Head Start program.
• The extent to which the planned approach includes techniques for successful transfer of the intervention and research to an additional site or sites.
• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
• The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
• The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.
• The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

B. Criteria for Priority Area 1.0–2: Early Head Start-University Partnerships

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 20 Points

• The research questions are clearly stated.
• The extent to which the proposed intervention is justified as meeting the needs of low-income children and families.
• The extent to which the research study makes a significant contribution to the knowledge base about supporting the mental health of low-income infants and toddlers and their families.
• The extent to which the literature review is current and comprehensive and justifies the intervention and evaluation plan. The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
• The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products.

2. Approach 45 Points

• The extent to which the intervention is adequately described and represents a research-based, cost effective quality program enhancement that meets the goal of supporting the mental health of children in Early Head Start.
• The extent to which the proposal is responsive to the questions outlined in the additional requirements section (especially items 2–5).
• The extent to which the research design is appropriate and sufficient for addressing the questions of the study (i.e., evaluation includes aspects of the intervention delivery (services delivered) and program context (structures and supports necessary to implement the intervention) as well as outcomes for children and families and associations between services and outcomes).
• The extent to which program-usable measures particularly of child functioning, are the major focus of the evaluation.
• The extent to which the planned research specifies the measures to be used, their psychometric properties, and the analyses to be conducted.
• The extent to which the planned measures are appropriate and sufficient for the questions of the study and the population to be studied.
• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the art.
• The extent to which the analytic techniques are appropriate for the question under consideration.
• The extent to which the proposed sample size is sufficient for the study.
• The scope of the project is reasonable for the funds available for these cooperative agreements.
• The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.
• The extent to which the planned approach includes techniques for successful documentation and dissemination.
• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the principal investigator and other key research staff possess the research expertise necessary to implement the intervention and conduct the evaluation as demonstrated in the application and information contained in their vitae.
• The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
• The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Early Head Start program staff and parents.
• The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

C. Criteria for Priority Area 1.03: Head Start Graduate Student Grants

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected 25 Points

• The research questions are clearly stated.
• The extent to which the questions are of importance and relevance for low-income children's development and welfare.
• The extent to which the research study makes a significant contribution to the knowledge base.
• The extent to which the literature review is current and comprehensive and supports the need for the study.
• The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
• The extent to which the proposed project is appropriate to the student's level of ability and the stated time frame for completing the project.

2. Approach 40 Points

• The extent to which there is a discrete project designed by the graduate student. If the proposed project is part of a larger study designed by others, the approach section should clearly delineate the research component to be carried out by the student.
• The extent to which the research design is appropriate and sufficient for addressing the questions of the study.

• The extent to which the planned research specifies the measures to be used, their psychometric properties, and the proposed analyses to be conducted.

• The extent to which the planned measures have been shown to be appropriate and sufficient for the questions of the study, and the population to be studied.

• The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques, and advance the state-of-the art, as appropriate.

• The extent to which the analytic techniques are appropriate for the question under consideration.

• The extent to which the proposed sample size is sufficient to answer the range of proposed research questions for the study.

• The scope of the project is reasonable for the funds available and feasible for the time frame specified.

• The extent to which the planned approach reflects sufficient written input from and partnership with the Head Start program.

• The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

3. Staff and Position Data 35 Points

• The extent to which the faculty mentor and graduate student possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.

• The principal investigator/faculty mentor has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.

• The extent to which the faculty mentor and graduate student reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.

• The adequacy of the time devoted to this project by the faculty mentor for mentoring the graduate student. The proposal should include evidence of the faculty mentor's commitment to mentoring the individual graduate student, and as appropriate, willingness to serve as a resource to the broader group of Head Start Graduate Students funded under this award.

D. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part IV of this announcement to review and score the applications, also taking into account responsiveness to other aspects of the announcement. The results of this review are a primary factor in making funding decisions. ACF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions. In selecting successful applicants, consideration may be given to other factors including but not limited to geographical distribution.

Part V. Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms. In order to be considered for a cooperative agreement or grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the cooperative agreement or grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Depending on the activities that are funded under this announcement, it is possible that the grantee institution may as a result of conducting the project have obligations or be impacted by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104–191).

Applicants will be covered by the terms of the Head Start Act (42 U.S.C. 9801 *et seq.*) including section 649(f) that ensures that ''all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.''

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0418). If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)-496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673. All necessary forms are available on the ACF Web site at *http://www.acf.dhhs.gov/programs/ofs/grants/form.htm*

B. Proposal Limits

The proposal should be double-spaced and single-sided on 8 ½″ x 11″ plain white paper, with 1'' margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the proposal (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact

information and the Table of Contents. The length of the proposal starting with page 1 as described above and including appendices and resumes must not exceed 60 pages. Anything over 60 pages will be removed and not considered by the reviewers. The project abstract should not be counted in the 60 pages. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants are encouraged to submit curriculum vitae using ''Biographical Sketch'' forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on ''Eligible Applicants'' will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus six copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

A complete application consists of the following items in this order:

Front Matter:

- Cover Letter
- Table of Contents
- Principal Investigator including telephone number, fax number and e-mail address.
- Project Abstract

(1) Application for Federal Assistance (SF 424, REV. 4–92);

(2) Budget information-Non-Construction Programs (SF424A&B REV.4–92);

(3) Budget Justification, including subcontract agency budgets;

(4) Letters (A) from the Head Start program certifying that the program is a research partner of the respective applicant and (B) that the Policy Council has reviewed and approved the application;

(5) Application Narrative and Appendices (not to exceed 60 pages);

(6) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–92;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone) (May 3, 2002.). Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: Head Start Research Support Team, 1749 Old Meadow Road, Suite 600, McLean, VA 22102. (1–877) 663–0250. E-mail *hsr@xtria.com.*

Attention:

Application for Head Start-University Partnerships, or Application for Early Head Start-University Partnerships, or Application for Head Start Graduate Student Grants, as appropriate

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 5 p.m., Monday-Friday (excluding holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or e-mail. Therefore, applications faxed or e-mailed to ACF will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend an application deadline when justified by circumstances such as acts of God (*e.g.,* floods or hurricanes), widespread disruptions of mail service, or other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers: 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0925–0418 and 0970–0139.

Public reporting burden for this collection is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants

from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When SPOC comments are submitted directly to ACF, they should be addressed to: William Wilson, ACYF's Office of Grants Management, Room 2220 Switzer Building, 330 C Street SW., Washington, DC 20447, Attn: Head Start Discretionary Research Grants Announcement. A list of the Single Points of Contact for each State and Territory can be found on the Web site *http://www.whitehouse.gov/omb/grants/spoc.html*

Dated: February 26, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–5088 Filed 3–1–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01D–0294 and 01D–0295]

Agency Information Collection Activities; Announcement of OMB Approval; Providing Regulatory Submissions in Electronic Format for Food Additive and Color Additive Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Providing Regulatory Submissions in Electronic Format for Food Additive and Color Additive Petitions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 2001 (66 FR 59796), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0480. The approval expires on November 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4963 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0335]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Nutrition Labeling of Dietary Supplements on a ''Per Day'' Basis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Nutrition Labeling of Dietary Supplements on a 'Per Day' Basis'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 9, 2001 (66 FR 56687), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0395.

The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4964 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0053]

Determination of Regulatory Review Period for Purposes of Patent Extension; Diphenylmethane Diisocyanate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for diphenylmethane diisocyanate and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For food additives, the testing phase begins when a major health or environmental effects test involving the food additive begins and runs until the approval phase begins. The approval phase starts with the initial submission of a petition requesting the issuance of a regulation for use of the food additive and continues until FDA grants permission to market the food additive product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive diphenylmethane diisocyanate. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for diphenylmethane diisocyanate (U.S. Patent No. 4,968,514) from BF Goodrich Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of diphenylmethane diisocyanate represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for diphenylmethane diisocyanate is 1,326 days. Of this time, 739 days occurred during the testing phase of the regulatory review period, 587 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test (''test'') involving this food additive additive product was begun:* September 23, 1996. FDA has verified the applicant's claim that the test was begun on September 23, 1996.

2. *The date the petition requesting the issuance of a regulation for use of the additive (''petition'') was initially submitted with respect to the food additive additive product under section 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 348):* October 1, 1998. The applicant claims September 9, 1998, as the date the petition for diphenylmethane diisocyanate was initially submitted. However, FDA records indicate that the petition was submitted on October 1, 1998.

3. *The date the petition became effective:* May 9, 2000. FDA has verified the applicant's claim that the regulation for the additive became effective/commercial marketing was permitted on May 9, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 962 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by May 3, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–4965 Filed 3–1–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2002.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 7, 2002, 5:00 p.m.–7 p.m.; March 8, 2002; 8 a.m.–5 p.m.; March 9, 2002; 9 a.m. to 5 p.m.; March 10, 2002; 8 a.m.–10:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Phone: (301) 468–1100.

The meeting is open to the public.

Agenda: The agenda will focus on meeting with the management team from the Agency and the Bureau of Health Professions regarding the Administration's vision and goals for the National Health Service Corps and the designation of health professional shortage areas.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Agenda items and times are subject to change as priorities dictate.

Dated: February 27, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5152 Filed 2–28–02; 10:36 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: April 12, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5020 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Population Research Subcommittee, March 25, 2002, 8 a.m. to March 26, 2002, 5 p.m., Four Points By Sheraton, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 19, 2002, 67 FR 7385.

The meeting will be held on March 25, 2002. The meeting is closed to the public.

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5017 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 21, 2002.

Time 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, jsherril@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 1, 2002.

Time 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Teleplhone Conference Call)

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, mcarey@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 11, 2002.

Time 1 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, mcarey@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5019 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Functional Imaging Agents''.

Date: March 7, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5021 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: March 21, 2002.

Time: 12:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 10, 2002.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 11, 2002.

Time: 9 AM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5022 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: June 10–12, 2002.

Time: 1 am to 3 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Rocky Mountain Laboratories, Building 6, Conference Room 349, Hamilton, MT.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301–496–3006, tk9c@nih.gov.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbilogy and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2002.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5023 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 25, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis panel.

Date: March 29, 2002.
Time: 10 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date: May 2, 2002.
Time: 10 am. to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Contact Person: Mary Westcott, PhD, Scientific Review Administrator.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5024 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.
Date: April 3, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To accept the College Drinking Task-Force Report.
Place: 6000 Executive Blvd., Suite 400, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth R. Warren, PhD, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, kwarren@niaaa.nih.gov.

Information is also available on the Institute's/Center's home page: silk.nih.gov/silk/niaaa1/about/roster.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5025 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: April 8, 2002.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216 hhaigler@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5026 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 4, 2002.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 5, 2002.
Time: 11 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114,

MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1723, nelsonja@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: March 12–13, 2002.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Ranga Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, stuesses@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.

Date: March 12–13, 2002.

Time: 1 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, 301–435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael A. Oxman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, 301–435–3565, oxmanm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 12, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, 301–435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.

Date: March 13–14, 2002.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, siroccok@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, stuesses@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, 301–435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 1:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2002.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 6.

Date: March 14–15, 2002.

Time: 8:00 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, N.W., Washington, DC 20036.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael R. Schaefer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, (301) 435–2477, schaefem@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 4.

Date: March 14–15, 2002.

Time: 8:30 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, mccormim@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, stuesses@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2002.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2002.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–5018 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Gossypol, Gossypol Acetic Acid and Derivatives Thereof and the Use Thereof for Treating Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any of U.S. patents 5,385,936 (01/31/1995) and 6,114,397 (09/05/2000) to Accu Therapeutics, Inc. of Rockville, Maryland. The prospective exclusive license may be limited to the development of compositions and methods utilizing gossypol, gossypol acetic acid and derivatives thereof in the treatment of human cancer. This Notice supercedes any prior Notices published in the **Federal Register** regarding this technology, including 61 FR 30915, Jun. 18, 1996 and 61 FR 67842, Dec. 24, 1996.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 3, 2002, will be considered.

ADDRESSES: Inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Licensing and Patent Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220.

SUPPLEMENTARY INFORMATION: The patents describe and claim methods utilizing gossypol, gossypol acetic acid and derivatives thereof for the treatment of cancer. Gossypol or its derivatives may be provided alone, in combination with each other, and/or in combination with other therapeutic agents. Particular cancers exemplified include adrenal, ovarian, thyroid, testicular, pituitary, prostate and breast cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives

written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.*, a completed Application for License to Public Health Service Inventions) in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: February 25, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–5027 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of Geldanamycin and Its Derivatives for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in: PCT Application PCT/US99/30631 (DHHS ref. No. E–151–98/1), ''Water-Insoluble Drug Delivery Systems;'' PCT/US99/16199 (DHHS ref. No. E–190–98/1), ''Water Soluble Drugs and Methods for their Production;'' US Patent Applications 60/246,258 (Provisional I, DHHS ref. No. E–289–00/0) 60/279,020 (Provisional II, DHHS ref. No. E–004–01/0), and 60/280,016 (Provisional III, DHHS ref. No. E–004–01/1) combined and converted into a PCT application PCT/US01/44172, filed on 11/6/01, ''Geldanamycin Derivatives Having Selective Affinity for HSP–90 and Methods for Using Same;'' and US Patent Application 60/280,078 (DHHS ref. No. E–050–00/1), ''Geldanamycin Derivatives and Method of Treating Cancer Using Same'', to Kosan Biosciences, Inc., having a place of business in Hayward, CA. The aforementioned patent rights have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 3, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Wendy R. Sanhai, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *sanhaiw@od.nih.gov;* Telephone: (301) 496–7056, ext. 244; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: These inventions describe and claim methods for the treatment of cancers. These methods utilize a class of compounds (Geldanamycin and derivatives thereof) as important inhibitors of HSP–90 and the HGF–SF–Met signaling pathway. Geldanamycin and its derivatives have been shown to inhibit HSP–90 chaperone function and down regulate of the expression of the Met receptor. Through these pathways these compounds have been implicated in the etiology of human cancers and the formation of secondary metastases.

The field of use may be limited to pharmaceutical use as anti-cancer agents in humans and animals.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 25, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–5028 Filed 3–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–08]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 Plaza, 451 Seventh Street, SW, Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Impaired Individuals is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD publish a description of and the cause for administrative actions against a HUD-approved mortgagee by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is given of administrative actions that have been taken by the Mortgagee Review Board from April 1, 2001 through September 30, 2001.

Title I Lenders and Title II Mortgagees that failed to comply with HUD/FHA requirements for the submission of an audited annual financial statement and/or payment of the annual recertification fee.

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001

Name	City	State
ABC Lending Inc	Coral Springs	FL
Affordable Home Funding	Fairport	NY
AFS Investments Inc	Cathedral City	CA
Air Academy Federal Credit Union	Colorado Springs	CO
Albany BK + TR Company N A	Chicago	IL
All Service Mortgage Inc	Woodstock	GA
Allfirst Bank	Harrisburg	PA
Alpha Mortgage Corporation Inc	Villa Park	IL
Ambank Illinois NA	Robinson	IL
Ameri-Cap Mortgage Group Inc	Plantation	FL
American Charter Mortgage	Downey	CA
American City Mortgage Corp	Carson	CA
American Diversified Mortgage	Laguna Hills	CA
American Family Financial Services	Atlanta	GA
American Home Bancorp	Huntington Beach	CA
American Lending Inc	Honolulu	HI
American Mortgage Express Fin	San Diego	CA
American United Mortgage Corporation	Greenwood Village	CO
Americanet Mortgage Corporation	Laguna Hills	CA
Amwest Mortgage Inc	Tahoe City	CA
Anheuser Busch Employees Cu	St Louis	MO
Anson Financial Inc	Bedford	TX
Apollo Funding LLC	Broomfield	CO
Approval First Mortgage Corp	Lakeland	FL
Approved Federal Savings Bank	Virginia Beach	VA
Approved Mortgage Financing	Jacksonville Beach	FL
Arlington National Bank	Arlington	TX
Associated Bank North	Wausau	WI
Assurety Mortgage Group Inc	Decatur	GA
Atlantic Financial Mortgage	Pleasanton	CA
Atlas Capital Corporation	Irvine	CA
Augusta Federal Savings Bank	Augusta	ME
Aviles and Associates Inc	Tampa	FL
Axiom Financial Inc	Orem	UT
Banco Popular De P R	San Juan	PR
Bank One NA	Columbus	OH
Bankers First Mortgage Company	Owings Mills	MD
BankVista	Sartell	MN
Barrington Capital Corporation	Irvine	CA
Barrons Mortgage Corp	Brea	CA
Bayside Financial Corp	Mission Viejo	CA
Beach Cities Mortgage Corporation	Santa Ana	CA
Big Island Mortgage Corp	Kailua Kona	HI
BOCC Funding Corporation	Reston	VA
Border State Bank Greenbush	Greenbush	MN
Brazoswood National Bank	Richwood	TX
California Capital Associates	San Diego	CA
California Home Lenders Inc	Long Beach	CA
California Trusted Funding Group	Los Angeles	CA
Callaway Bank	Fulton	MO
Carolina Home Mortgage Group Inc	Columbia	SC
Central New England Mortgage	Worcester	MA
Centurion Mortgage Inc	Kennesaw	GA
Certified Home Loans of Florida Inc	Miami	FL
Chase Bank of Texas NA	Houston	TX
Chemical Bank Montcalm	Stanton	MI
Chemical Bank North	Grayling	MI
Chisago State Bank	Chisago City	MN
Cima Home Loans	South Pasadena	CA
Citizens Bank of—Las Cruces	Las Cruces	NM
Citizens First Bank	El Dorado	AR
Citizens Savings Bank F.S.B.	Normal	IL
City National Bank West Virgina	Charleston	WV
Citywide Financial Group Inc	Long Beach	CA
Citywide Loan Services	Chatsworth	CA
Cloquet Co-Op CR UN	Cloquet	MN
CM Nationwide Mortgage Corp	Santa Ana	CA
CMA Services Group	Long Beach	CA
CNB National Bank	Jacksonville	FL
Coastal Capital Corp	Jericho	NY
Cohoes Savings Bank	Cohoes	NY
Colonial Bank	Des Peres	MO

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Columbia Equities LTD	Tarrytown	NY
Commerce Bank	Kansas City	MO
Community Bank-Dearborn	Dearborn	MI
Community Commerce Bank	Commerce	CA
Community Home Equities Corp	Hillside	NJ
Consolidated Consultants Inc	Las Vegas	NV
Consumer Electronic EMP FCU	Marion	IN
Coop CR NVL RVLT RDS	Fajarado	PR
Corona Hills Financial Inc	Boise	ID
Credicorp Inc	Chicago	IL
Crystal Mortgage Corp	Piscataway	NJ
D C Capital Group Inc	West Covina	CA
Dedham Institute for Savings	Denham	MA
Del Sol Mortgage	Carson	CA
DMI Inc	Boise	ID
Donald C Kinnsch	Lake Elsinore	CA
Downey Mutual Financial Inc	Downey	CA
DPS FInancial Services Inc	Laguna Hills	CA
Duluth Federal Employee CU	Duluth	MN
Eagle Mortgage Company	Omaha	NE
EFC Securitized Assets LC	Austin	TX
Elmira Savings Bank	Elmira	NY
Empire Funding Corp	Austin	TX
Enterprise Capital Corporation	Van Nuys	CA
Erwin Residential Group	Valley Village	CA
Euro Funding Corp	Downey	CA
Evergreen Pacific Mortgage Inc	Eugene	OR
Excel Mortgage Co	Brentwood	TN
Executive Mortgage Bankers LTD	Farmingdale	NY
Express Real Estate Finance Inc	Glendale	CA
F and M Bank	Hilbert	WI
F and M Bank Emporia	Emporia	VA
Farm Bureau Bank FSB	Sparks	NV
Farmers & Merchants State Bank	Waterloo	WI
FCMC Inc	Boulder	CO
Federal Mortgage Corporation	Waterford	MI
Ficus Financial Services Inc	Chicago	IL
Fidelity Funding Mortgage Corp	Richardson	TX
Fina Employees Federal C U	Dallas	TX
Financial Center West	Santa Ana	CA
First Allied Mortgage Inc	Walnut Creek	CA
First Atlantic Mtge LLC	Atlanta	GA
First Bank	Ketchikan	AK
First Bank of Conroe NA	Conroe	TX
First Community Bank	Pocahontas	AR
First Community Mortgage Company LLC	Henderson	NC
First Federal Savings Bank	Tuscaloosa	AL
First Financial Credit Union	West Covina	CA
First Funding Mortgage Corp	Charlotte	NC
First Home Mortgage Corp	Mount Prospect	IL
First Independence National Bank	Detroit	MI
First National Bank	El Dorado	AR
First National Bank	Ames	IA
First National Bank North	Sandstone	MN
First National Bank of Magnolia	Magnolia	AR
First National Bank Southeast	Reidsville	NC
First Priority Financial Inc	Dublin	CA
First Residential Mortgage	Birmingham	AL
First Savings and Loan Assn	Sea Isle	NJ
First Savings Bank	Perkasie	pa
First State Bank and Trust	Rainelle	WV
First Vantage Bank-Tri-Cities	Damascus	VA
Firstar Bank Milwaukee Na	Milwaukee	WI
Firstar Trust Company	Milwaukee	WI
Firstbank Oaklawn	Texarkana	TX
Fletcher Hills Financial	La Mesa	CA
Foremost Mortgage Company LLC	Houston	TX
Foremost Mortgage Company LP	Houston	TX
Fort Snelling Federal CR Union	MInneapolis	MN
Fortress Mortgage Inc	McLean	VA
Fortune Financial Mortgage Corp	Nashua	NH

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Fox Chase Federal Savings Bank	Philadelphia	PA
Friendship Community Bank	Ocala	FL
Fund America Investors Corp II	Englewood	CO
G A Investment Inc	Corona	CA
Gateway Services Inc	San Diego	CA
Genesis Federal Credit Union	Springfield	VA
Gold Coast Funding Inc	Irvine	CA
Grant County Bank	Ulysses	KS
Greater Boston Mortgage Inc	Jamaica Plain	MA
Greenback Funding Inc	South El Monte	CA
Greenridge Enterprises	Long Beach	CA
GT Funding Corporation	Lincoln	RI
Hacienda Mortgage Shop Inc	Fremont	CA
Headland National Bank	Headland	AL
Heartland National Bank	Herrin	IL
Highland Community Bank	Chicago	IL
Home Federal Bank FSB	Hamilton	OH
Home Financial Mortgage	Plymouth	MI
Home Lenders Financial Services Inc	Greenville	SC
Home Loan Specialists Inc	Laguna Hills	CA
Home Mortgagee Corporation	Levittown	NY
Home Owner Financial Plus	Tarzana	CA
Home Trust Company	Houston	TX
Hometown National Bank	New Albany	IN
Horizon Financial Corp	Fairfield	NJ
Household Financial Services Inc	Prospect Heights	IL
Howe Mortgage Corporation	Phoenix	AZ
In Time Funding LLC	Somerset	CA
Independent Bank of Oxford	Oxford	AL
Interamerican Financial Services Inc	Miami	FL
Interlinq Financial Corporation	Lake Elsinore	CA
Interstar Mortgage Corporation	Dallas	TX
Interstate Banc Inc	Columbus	OH
Interstate Mtge Direct Funding	Upland	CA
Ixonia State Bank	Ixonia	WI
J and R Mortgage Inc	San Mateo	CA
J S T Development Corp	Woodland Hills	CA
Jefferson Heritage Bank	Ballwin	MO
Jefferson Mortgage and Investment Inc	Birmingham	AL
JM Mortgage Corporation	Garden Grove	CA
Johnson Bank	Racine	WI
Joseph A Broderick Realty Corp	Santa Ana	CA
Kevin White Co Inc	Culver City	CA
Kevron Investments Inc	Westlake Village	CA
Keybank National Association	Boise	ID
King Company LLC	Boise	ID
Ladd Mortgage Company	Canton	CT
Lam Estate Corporation	Santa Ana	CA
Lee and Jackson Finan Services	Camarillo	CA
Lincoln Community Bank	Milwaukee	WI
Linear Capital Inc	Long Beach	CA
Llewellyn Edison Svgs Bank SLA	W Orange	NJ
Loancity-Com	San Jose	CA
Loans for Less Inc	Artesia	CA
Loanstar America Inc	Corona	CA
Madison Home Equities Inc	Lake Success	NY
Mansfield Metro Credit Union	Mansfield	OH
Manufacturers and Traders TR Co	Buffalo	NY
Mar Vista Mortgage	Whittier	CA
MC Mortgage Inc	Laguna Beach	CA
McAloon Mortgage Company Inc	Hollywood	FL
McClian County National Bank	Purcell	OK
MCM Funding Corp	Claremont	CA
Melcor Financial Group Inc	Granada Hills	CA
Member Service Federal CU	Little Rock	AR
Mesa Verde Mortgage Inc	Laguna Hills	CA
Metro Mortgage Inc	Las Cruces	NM
Metropolitan Mortgage FSC	Forestville	MD
MFC First National Bank	Iron River	MI
MFC First National Bank	Marquette	MI
MFC First National Bank	Menominee	MI

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Mid County Mortgage Bankers Corp	Norwalk	CT
Midland Bank	Lees Summit	MO
Midwest Funding Corporation	Downers Grove	IL
Millenium Mortgage Investors Corp	Miami	FL
Mortgage Capital Resource Company	Riverside	CA
Mortgage Consultant and Co Inc	Fairfield	NJ
Mortgage Lending LLC	Southaven	MS
Mortgage Network USA Inc	Burr Ridge	IL
Mortgage.Com Inc	Sunrise	FL
Murrieta Financial Inc	Lake Elsinore	CA
National Bank of Commerce	El Dorado	AR
National Bank of Alaska	Anchorage	AK
Nations First Financial LLC	Salt Lake City	UT
Neighborhood National Bank	San Diego	CA
Nicolas Mortgage and Financial Services	San Jose	CA
North County Real Estate Inc	Oceanside	CA
North Hawaii Community FCU	Honokaa	HI
Norwest Bank La Crosse NA	La Crosse	WI
Numax Mortgage Corporation	Germantown	MD
Old Kent Bank	Kalamazoo	MI
Old Kent Mortgage Company	Grand Rapids	MI
Omni Financial Services Inc	Atlanta	GA
P and A Financial Inc	Riverside	CA
Pace Financial Corp	Orlando	FL
Pacific Exchange Mortgage Lender	Woodland Hills	CA
Pacific Horizon Mortgage Corporation	Riverside	CA
Pacific One Bank NA	Kennewick	WA
Pacific Rim Funding Inc	Torrance	CA
Paladin Financial Inc	Austin	TX
Palma Corporation	Las Vegas	NV
Pan American Bank Fsb	San Mateo	CA
Pathfinder Mortgage Company	Phoenix	AZ
Peoples Bank-Point Pleasant	Point Pleasant	WV
Peoples State Bank	Wells	MN
Pillar Financial Corporation	Waterford	MI
Pinnacle Bank	Lexington	NE
Plaza Mortgage Company Inc	Metairie	LA
PMA Mortgage Inc	Long Beach	CA
Preferred Bank	Big Lake	MN
Premier Mortgage Services	Salt Lake City	UT
Primary Capital Inc	Irvine	CA
Primerchant Capital Corporation	Sherman Oaks	CA
Professional Invest and Fin Gr	Monterey Park	CA
Providence Financial Corporation Inc	Austin	TX
Quality Funding Group	San Diego	CA
Quality Mortgage Group	Oxford	CA
Queens County Savings Bank	Flushing	NY
R M G Funding Group Inc dba National Ban	Canoga Park	CA
Reaching Another Dimension Fin Ser Inc	Sunrise	FL
Real Estate Lenders Inc	Santa Clarita	CA
Real Estate Mortgage Acceptance	Los Angeles	CA
Referral Finance-Com Corporation	Austin	TX
Republic Bank	Ann Arbor	MI
Resource Bank	Virginia Beach	VA
Riverside Credit Union	Buffalo	NY
RMB Investment Inc	Marina Del Rey	CA
Ron Simpson and Associates Inc	Southfield	MI
Roslyn National Mortgage	Melville	NY
Royal Mortgage Bankers Inc	Great Neck	NY
Russell Country Federal Credit Union	Great Falls	MT
Ryans Express Equities Corp	Eas Meadow	NY
Sanmar Financial Group Inc	Long Beach	CA
Saromar Enterprises Inc	Glendale	CA
SCE Federal Credit Union	Irwindale	CA
Scripps Bank	La Jolla	CA
SFA Capital Ventures Inc	Northridge	CA
Signature Bank	Bad Axe	MI
Smith Haven Mortgage Corporation	Melville	NY
Sound Federal S+L Asso	Mamaroneck	NY
Southern New Hampshire Bank and Trust Co	Manchester	NH
Southwest Cedar Rapids Com FCU	Cedar Rapids	IA

333 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Space Coast Credit Union	Melbourne	FL
St Edmonds Federal SB	Philadelphia	PA
Standard Federal Bank	Troy	MI
State Bank	West Fargo	ND
State Bank	Richmond	MN
State Bank	Lucan	MN
State Bank	Bricelyn	MN
State Bank La Crosse	Sparta	WI
Statewide Savings Bank SLA	Jersey City	NJ
Sterling Funding Corporation	Rancho Santa Margar	CA
Summit Bank	Arkadelphia	AR
Summit Financial Corporation	Irvine	CA
Summit Mortgage Corporation	Irvine	CA
Sunshine Funding Company	Winter Park	FL
Sunstar Mortgage Corporation	Rancho Cucamonga	CA
TCF National Bank	Minnepolis	MN
Texas Transportation Federal CU	San Antonio	TX
The Money Store Kentucky Inc	Louisville	KY
The Mortgage Bank Inc	Miami	FL
The Park Bank	Madison	WI
The Savings Bank	Utica	NY
Towne And Country Mortgage Corp	North Huntingdon	PA
Tri City Bank TR CO	Blountville	TN
Triple S Federal Credit Union	Sacramento	CA
Truong and Co Inc	Canoga	CA
Trust Company Bank NE Georgia	Madison	GA
Union Capital Funding Inc	Los Angeles	CA
United Companies Financial Cor	Baton Rouge	LA
United Minnesota Bank	New London	MN
United Missouri Bank NA	Kansas City	MO
Universal Bancorp	Laguna Hills	CA
Universal Lending Corp	Sacramento	CA
US Bank Trust National Assoc-Arizona	Phoenix	AZ
Valley Heights Funding Inc	Moreno Valley	CA
VIP Funding Ltd	Richmond Hill	NY
Wallick nd Volk Inc	Cheyenne	WY
Webtd Com	Woodland Hills	CA
West Chicago State Bank	West Chicago	IL
West Coast Guaranty Bank NA	Sarasota	FL
Western Home Lending Corporation	Los Angeles	CA
Western Home Mortgage Corp	Irvine	CA
Western Sierra National Bank	Cameron Park	CA
Western United Financial	Tustin	CA
Westland Savings Bank SA	Tomah	WI
Winterwood Mortgage Group	Greenwood	IN
WY HY Federal Credit Union	Cheyenne	WY
Wyoming Employees Federal C U	Cheyenne	WY
Zapata National Bank	Zapata	TX

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001

Name	City	State
Absolute Brokerage Services Ltd	White Plains	NY
Absolute Mortgage Company Inc	Tempe	AZ
Access Mortgage Corp	Oklahoma City	OK
Accord Mortgage Lenders Corp	Miami	FL
Accredited Mortgage Inc	Kissimmee	FL
ACF Partners	Pasadena	CA
Admiral Funding LLC	Birmingham	AL
Advanced Mortgage LLC	Henderson	NV
Advantage Home Loan Counselors Inc	La Mesa	CA
Advantage Mortgage Corporation	Naperville	IL
Advantage Mortgage Inc	Colorado Springs	CO
Advantage Plus Financial Inc	Santa Maria	CA
Affirmative Mortgage Loans Inc	Largo	FL
AFS Investments Inc	Cathedral City	CA
Alert Financial Services Inc	Parma Heights	OH
All American Mortgage Services Inc	Las Vegas	NV

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
All Cities Funding Inc	Downey	CA
Alliance Bank FSB	Somerset	KY
Alliance West Mortgage Corp	Scottsdale	AZ
Altimate Discount Mortgage	Willow Grove	PA
Altiva Financial Corporation	Atlanta	GA
AM Mortgage Brokers Inc	Boulder	CO
AMB Mortgage Corporation	Maitland	FL
Ameri—Cap Mortgage Group Inc	Plantation	FL
American Advantage Mortgage Inc	Baltimore	MD
American Alliance Financial Services	Indianapolis	IN
American Diversified Mortgage Corp	Laguna Hills	CA
American Family Financial Services Inc	Atlanta	GA
American Family Mortgage Co	Palos Heights	IL
American Funding Mortgage Corp	Miami	FL
American Home Mtg and Assoc	Weston	FL
American Lending Alliance Inc	Honolulu	HI
American Loans	Murray	UT
American Mortgage Capital Inc	Plantation	FL
American Mortgage Group LLC	Owensboro	KY
American Mortgage Solutions Inc	Columbus	OH
American National Bank-Vincennes	Vincennes	IN
American National Group Inc	Corona	CA
American Pioneer Life Ins	Orlando	FL
American Security Financial Corporation	Modesto	CA
American Trust Mortgage Inc	Chicago	IL
American United Mtg Corp	Greenwood Village	CO
Americapital Service Corp	Atlanta	GA
Ameristar Mortgage Corp	Atlanta	GA
Amresco Capital LP	Dallas	TX
Amwest Mortgage Inc	Tahoe City	CA
Anchor Bank	Myrtle Beach	SC
Andrews Charles Mortgage Co	Rockford	IL
Anneler Mortgage Services LLC	Colorado Springs	CO
Anson Financial Inc	Bedford	TX
Apex Financial Group Inc	Brandon	FL
Ascent Mortgage Inc	Denver	CO
Assured Mortgage Co LLC	St Paul	MN
Assured Mortgage Corp	Independence	OH
Athens First Bank and Trust Company	Athens	GA
Atlantic Financial Mortgage	Pleasanton	CA
Atlantic International Mtg Co	Tampa	FL
Atlantic Vanguard Mortgage	Altamonte Springs	FL
Atlas Capital Corporation	Irvine	CA
Avalon Financial Consultants LLC	Dunwoody	GA
Bank of Canton	Canton	GA
Bank of Canton	Canton	GA
Bank of Coweta	Newnan	GA
Bank of Hazlehurst	Hazlehurst	GA
Bank of Homewood	Homewood	IL
Bank of Illinois	Normal	IL
Bank of Lenox	Lenox	GA
Bank of Mount Vernon	Mount Vernon	KY
Bank of Prattville	Prattville	AL
Bank of Rogers	Rogers	AR
Bank of Stockdale	Bakersfield	CA
Bank of Tuscaloosa	Tuscaloosa	AL
Bank of Ventura	Ventura	CA
Bank One–NA	Park Ridge	IL
Bank Star One	Fulton	MO
Bankers First Mortgage Co	Owings Mills	MD
Bankers Residential Mortgage Corp	Richardson	TX
Bankline Mortgage Corp	Greenville	SC
Barbour County Bank	Philippi	WV
Barrington Bank and Trust Co NA	Barrington	IL
Baylor Finance and Mortgage Inc	Dallas	TX
Beach Cities Mortgage Corporation	Santa Ana	CA
Berean Federal Savings Bank	Philadelphia	PA
Big Island Mortgage Corp	Kailua-Kona	HI
Black Diamond Savings Bank	Norton	VA
Blue Ridge Bank and Trust Co	Kansas City	MO
Boise EMPL Credit Union	International Falls	MN

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Boyer Mortgage Corporation	Kenner	LA
BRDB Inc	San Diego	CA
Bright Financial Corp	Walnut	CA
Buyers Edge Mortgage Corp	Alexandria	VA
CFM Mortgage Inc	College Park	GA
Cabarrus Bank North Carolina	Cornelius	NC
Cache Mortgage Corporation	Logan	UT
California Trusted Funding Group	Los Angeles	CA
Callaway Bank	Columbia	MO
Cambridge Savings Bank	Cambridge	OH
Capital Family Mortgage Co	Geneva	IL
Capital Mortgage Network Inc	Rochester	NY
Capitaland Funding Group LLC	Malta	NY
Capstone Lending Corp	Los Angeles	CA
Capstone Mortgage Corporation	Oak Park	MI
Cargill Bank CT	West Springfield	MA
Catskill Savings Bank	Catskill	NY
CB and T Bank	Warner Robbins	GA
Centennial Bankers Mortgage LLC	Windsor	CO
Centra Bank Inc	Morgantown	WV
Central Mortgage and Finance LLC	Beltsville	MD
Chase Bank of Texas NA	Houston	TX
Chester National Bank	Perryville	MO
Chicago Mortgage Corporation	Chicago	IL
Chinchiolo Realtors Inc	Stockton	CA
Chisago State Bank	Chisago City	MN
CHO Hung Bank of New York	New York City	NY
Cima Home Loans	South Pasadena	CA
Citimortgage Inc Ballwin	Ballwin	MO
Citizens and Merchants St Bank	Douglasville	GA
Citizens Bank and Trust West Georgia	Carrollton	GA
Citizens Credit Services Inc	Clearwater	FL
Citizens First Bank	El Dorado	AR
Citizens Mortgage Service Co	Fort Washington	PA
Citizens Southern Bank	Beckley	WV
Citizens State Bank Hamilton	Hamilton	MT
City Mortgage Corp	Clifton	NJ
Citywide Loan Services	Chatsworth	CA
Clark Financial	Rolling Meadows	IL
Classic Mortgage LLC	Maywood	NJ
CM Nationwide Mortgage Corp	Santa Ana	CA
Co-op Credit Union Montevideo	Montevideo	MN
Coastline Mortgage Inc	Carlsbad	CA
Cohoes Savings Bank	Cohoes	NY
Cohutta Banking Company	Chatsworth	GA
Columbus Bank and Trust Co	Columbus	GA
Columbus Capital Mortgage LTD	Reynoldsburg	OH
Comfort Mortgage Corporation	Roselle Park	NJ
Commercial Bank	Leadville	CO
Commercial Bank	Thomasville	GA
Commonwealth National MTG Corp	Livonia	MI
Community Bank	Preston	IA
Community Bank and Trust	Dothan	AL
Community Bank Tri-County	Waldorf	MD
Community Capital Bank	Brooklyn	NY
Community First Bank	Carrollton	GA
Community First Bank	Maysville	KY
Community First Mortgage	Sylva	NC
Community First National Bank	Rock Springs	WY
Community Mut Sav Bank So NY	White Plains	NY
Community Service Programs W Alabama Inc	Tuscaloosa	AL
Conduit Financial Services Inc	Chicago	IL
Consolidated Financial Inc	Miami	FL
Construction Funding Corporation	Schaumburg	IL
Continental Capital Funding Corp	Royal Palm Beach	FL
Contour Mortgage Corporation	Westbury	NY
Corstan Inc	Las Vegas	NV
Covenant Mortgage Corp	Arlington Heights	IL
Coventry Mortgage	Boise	ID
Covest Banc	McHenry	IL
Creative Mortgage Services Inc	Annapolis	MD

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Creditland Mortgage-Com Inc	Woodbury	NJ
Creekside Mortgage Corp	Bridgeville	PA
Cypress Financial Mortgage Corp Inc	Davie	FL
Cypress Mortgage	Madera	CA
D and N Bank FSB	Hancock	MI
D C Capital Group Inc	Temple City	CA
D Sackett Inc	Santa Rosa	CA
DDM Mortgage Corp	Raleigh	NC
Dedham Institution for Savings	Dedham	MA
Deepak Mehra	Roswell	GA
Del Sol Mortgage	Carson	CA
Diamond Lenders Group Corp	Minneapolis	MN
Diversified Mortgage Capital Inc	Encino	CA
Donald Webber Mortgage Co.	Highland	IN
Draper Bank and Trust	Draper	UT
Drexel Mortgage Corp	Richmond Hill	NY
Drovers and Mechanics Bank	York	PA
Dupaco Community Credit Union	Dubuque	IA
DVI Mortgage Funding Inc	Jamison	PA
Dynamic Mortgage Co	Houston	TX
EAA Capital Company LLC	Silver Spring	MD
Eagle Mortgage Funding	Cincinnati	OH
Eagle Mortgage Incorporated	Sandy	UT
Eagle Trust Mortgage Corp	Miami	FL
Eastern Mortgage Associates Inc	Miami	FL
Edmond Bank and Trust	Edmond	OK
ELB Mortgage Brokers Inc	Northbrook	IL
Empire Bank	Springfield	MO
Empire Mortgage LLC	Bowling Green	KY
Emporia State Bank and Tr Co	Emporia	KS
Enhanced Financial Services Incorporated	Portland	OR
Enterprise Home Loans	Encino	CA
Equality State Bank	Cheyenne	WY
Equitable Mortgage Corporation	Columbus	OH
Equity First Funding Corp	Salt Lake City	UT
Erwin Residential Group	Valley Village	CA
Euro Funding Corporation	Cerritos	CA
Excel Funding Inc	Vancouver	WA
Excel Mortgage Company	Brentwood	TN
Executive Mortgage Bankers Ltd	Farmingdale	NY
Express Financial Centre LC	Salt Lake City	UT
Express Financial Corp	Boca Raton	FL
Express Funding LLC	San Diego	CA
Express Mortgage Inc	Chicago	IL
Express Real Estate Finance Inc	Glendale	CA
Family Federal Savings FA	Fitchburg	MA
Farm Bureau Bank FSB	Sparks	NV
Farmers and Traders State Bank	Jacksonville	IL
Farmers Merchants State Bank	Boise	ID
Federal Mortgage Corporation	Waterford	MI
Ficus Financial Services	Chicago	IL
Fidelity and Company of Georgia	Atlanta	GA
Fidelity Funding Mortgage Corp	Richardson	TX
Fidelity Mortgage and Funding	Memphis	TN
Fidelity Mortgage Services Corporation	Kingwood	TX
Financial Center West Inc	Santa Ana	CA
Financial Guarantee	Westfield	NJ
Financial Resource Center Mortgage Inc	Schaumburg	IL
Firefighters Funding Inc	Santa Ana	CA
First Advantage Mortgage Inc	Tucker	GA
First American Mortgage Corp	Indianapolis	IN
First Bank of Central Jersey	North Brunswick	NJ
First Bank of Marietta	Marietta	OH
First Bank of the Americas	Chicago	IL
First Capital Mortgage Corp	Beachwood	OH
First Choice Bank	Greeley	CO
First Choice Mortgage Company	Grand Blanc	MI
First City Bank and Trust Co	Hopkinsville	KY
First Class Mortgage Corporation	Yorba Linda	CA
First Coastal Bank	Virginia Beach	VA
First Coastal Mortgage Corp	Metairie	LA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
First Commerce Bank Colorado	Colorado Springs	CO
First Commercial Bank	Birmingham	AL
First Commercial Bank Huntsville	Huntsville	AL
First Community Bank	Tifton	GA
First Community Bank Cherokee	Woodstock	GA
First Community Mortgage Company LLC	Henderson	NC
First Credit Mortgage LLC	Chandler	AZ
First Eagle Mortgage Corporation	Silver Spring	MD
First Federal Community Credit Union	Cedar Rapids	IA
First Federal Savings ALA	East Hartford	CT
First Fidelity Bank Na	Oklahoma City	OK
First Financial Mortgage Corp	Akron	OH
First Gaston Bank of North Carolina	Gastonia	NC
First Georgia Community Bank	Jackson	GA
First Integrity Mortgage Co	Closter	NJ
First Investment Company	Columbus	OH
First Investors Mortgage Corp	Madison	MS
First Kentucky Bank	Sturgis	KY
First Kentucky Federal Svgs AL	Central City	KY
First Liberty National Bank	Bethesda	MD
First Mountain Bank	Big Bear Lake	CA
First National Bank	Layton	UT
First National Bank	Magnolia	AR
First National Bank	El Dorado	AR
First National Bank and Tr Co	Carbondale	IL
First National Bank Blue Island	Blue Island	IL
First National Bank Dona Ana Co	Las Cruces	NM
First National Bank Fort Myers	Fort Myers	FL
First National Bank Joliet	Joliet	IL
First National Bank of Herminie	Herminie	PA
First National Bank of McCook	McCook	NE
First National Bank of Springdale	Springdale	AR
First National Bank Pryor Crk	Pryor	OK
First National Funding Corp	Rochelle Park	NJ
First Natl Bank of Boulder County	Boulder	CO
First Natl Bank of Shelby	Shelby	OH
First Rate Mortgage Corporation	Green Bay	WI
First Republic Bank	Rayville	LA
First Republic Mortgage Corp	Nashville	TN
First Residential Bancorp	Chicago	IL
First Savings Bank of Virginia	Springfield	VA
First Source Financial Grp	Oklahoma City	OK
First State Bank	Barboursville	WV
First State Bank Harrah	Harrah	OK
First State Bank and Trust Co	Valdosta	GA
First State Bank and Trust Co	Shawnee	OK
First State Bank of Pekin	Pekin	IL
First State Bank Rolla	Rolla	ND
First Texas Bank	Lampasas	TX
First United Bank and Trust	Oakland	MD
First United Mortgage Corp	Dyer	IN
First Western Bank Trust Co	Rogers	AR
Firstar Trust Co	Milwaukee	WI
Firstbank	Texarkana	TX
Firstier Bank	Northglenn	CO
Firstplus Financial Inc	Salt Lake City	UT
Floridian Mortgage Corp	Hollywood	FL
Foremost Mortgage Company LP	Houston	TX
Fortune Financial Mortgage Corp	Nashua	NH
Founders Bank of Arizona	Scottsdale	AZ
Founders Trust National Bank	Sioux Falls	SD
Four M Financial Inc	Orland Park	IL
Freedom Financial Services of Arkansas	Little Rock	AR
Fremont National Bank	Canon City	CO
Frontier Funding Corporation	Los Angeles	CA
Funding One Mortgage Corporation	Hayward	CA
Fundmor Inc	Annandale	VA
G L Byron and Company	Brighton	MI
Gainesville Bank and Trust	Gainesville	GA
Garcia Financial Service Inc	Santa Maria	CA
Gateway Home Mortgage	Kirkland	WA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Gateway Services Inc	San Diego	CA
Gerald J Stanfield Inc	Laguna Hills	CA
Glacier Bank of Eureka	Eureka	MT
Global Holdings V LLC	Federal Way	WA
Global Mortgage Funding LLC	New Orleans	LA
GMS Mortgage Inc	Baton Rouge	LA
Gotham Mortgage Corp	Boca Raton	FL
Great American FED Savings ALA	Pittsburgh	PA
Greater Colorado Mortgage Inc	Aurora	CO
Greenback Funding Inc	South EL Monte	CA
Greenfield Mortgage Company	Southfield	MI
Greenridge Enterprises	Long Beach	CA
Group Mortgage Inc	Miami	FL
GT Funding Corporation	Lincoln	RI
Guaranteed Equity Lenders Inc	Timonium	MD
Guardian Fidelity Mortgage Inc	Rock Hill	SC
Guardian Life Ins Co America	New York	NY
Gulfstream Financial Services	Grand Rapids	MI
Gulfstream Mortgage Corp	North Miami	FL
Gull Mortgage Inc	Lomita	CA
Hacienda Mortgage Shop Inc	Fremont	CA
Hamilton Financial Corporation	San Francisco	CA
Hansen Financial Corporation	Annapolis	MD
Harbor Financial Mortgage Corp	Houston	TX
Harmony Mortgage Inc	Santa Ana	CA
Harvard Home Mortgage Inc	Annapolis	MD
Helmick Mortgage Corporation	Delta	CO
Help U Sell of Staten Island Inc	Staten Island	NY
Heritage Bank	Tempe	AZ
Heritage Bank of Schaumburg	Schaumburg	IL
Heritage Cooperative Bank	Salem	MA
Heritage USA Mortgage LLC	Memphis	TN
Hi-Tech Financial Service Inc	Los Angeles	CA
HMN Mortgage Services Inc	Brooklyn Park	MN
HMS Capital Inc	Calabasas	CA
HNB Bank NA	Harlan	KY
Home Advantage Mortgage Corp	Littleton	MA
Home Federal Savings and Loan	Oklahoma City	OK
Home Federal Savings Bank	Hagerstown	MD
Home Lenders Financial Services Inc	Greenville	SC
Home Owner Financial Plus	Tarzana	CA
Home Owners Funding Corp AME	Dallas	TX
Home Quest Mortgage LC	Salt Lake	UT
Home Service Associates Inc	Campbell	CA
Homefn Mortgage Corporation	Atlanta	GA
Homefront Financial Services Inc	Santa Ana	CA
Homestead Real Estate Fin Inc	San Ramon	CA
Horizons Financial Services Inc	Citrus Heights	CA
Hughes Financial Group Inc	Sonora	CA
I Real Estate Corporation	Sacramento	CA
Illinois Mortgage Consultants Inc	Hinsdale	IL
In Time Funding LLC	Somerset	CA
Inez Deposit Bank	Inez	KY
Integrity Mortgage Solutions Inc	Lilburn	GA
Interamerican First Mortgage Corporation	Miami	FL
Interlinq Financial Corporation	Lake Elsinore	CA
Interstar Mortgage Corporation	Dallas	TX
Interstate Banc Inc	Columbus	OH
Interstate Mtg Direct Funding	Upland	CA
Iron River National Bank	Iron River	MI
Itasca State Bank	Grand Rapids	MN
Jamaica Savings Bank FSB	Lynbrook	NY
Javazon Financial Services Inc	Denver	CO
JD Hutton Inc	Salt Lake City	UT
Jefferson Heritage Bank	Ballwin	MO
Jefferson Mortgage Group LTD	Oakton	VA
Jeffmortgage Inc	Haddon Heights	NJ
Johnson and Assoc South States Mtg LLC	Birmingham	AL
Johnson and Associates Mtg Co	Birmingham	AL
Katmar Investments LLC	Denver	CO
Kellogg Company Employees Federal CU	Omaha	NE

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Ladd Mortgage Company	Canton	CT
Lakeside Bank	Chicago	IL
Landmark Community Bank	Ramsey	MN
LaSalle Bank FSB	Chicago	IL
Leader Mortgage Loan Corp	Medford	OR
Leading Edge LLC	Alexandria	VA
Lendex Inc	Dallas	TX
Lending Resource Inc	New Rochelle	NY
Lendingstar Mortgage Inc	Calumet City	IL
Lexus Mortgage Inc	Dallas	TX
Liberty Financial Group Inc	Montclair	CA
Liberty Star Mortgage Inc	Houston	TX
Lincoln Community Bank	Milwaukee	WI
Linear Capital Inc	Long Beach	CA
Llanfare Mortgage Company LLC	Denver	CO
Llewellyn-Edison Savings Bank SLA	West Orange	NJ
Loans for Less Inc	Artesia	CA
Loanstar America Inc	Corona	CA
Long Island Commercial Bank	Islandia	NY
Longstreet Capital LLC	Raleigh	NC
Los Angeles Federal Credit Union	Glendale	CA
M and I Bank of Burlington	Burlington	WI
M and I Bank of Racine	Racine	WI
M and I Lake Country Bank	Hartland	WI
M and I Lakeview Bank	Sheboygan	WI
M and I Mid State Bank	Stevens Point	WI
Malone-Gordon Mortgage and Investments	Tuscaloosa	AL
Mar Vista Mortgage Inc	Whittier	CA
Marine Air Federal C U	Santa Ana	CA
Maritime Financial Services Inc	West Covina	CA
Market Building and Saving Co	Cincinnati	OH
Market Street Lending LTD	Columbus	OH
Mayflower Financial Services LLC	Colchester	CT
MBA Mortgage Corporation	Millersville	MD
MBS Financial Inc	Fairfax	VA
McIlroy Bank and Trust	Fayetteville	AR
MCM Funding Corp	Claremont	CA
Members Mortgage Corporation	Wyndmoor	PA
Members Mortgage Corporation	Garden City	NY
Mentor Financial LLC	Farmington	MI
Mercantile Bank FSB	Davenport	IA
Mercantile Bank Kentucky	Paducah	KY
Merchants and Planters Bank	Camden	AR
Merrit Mortgage Funding Inc	Columbus	OH
Mesa Verde Inc	Laguna Hills	CA
Metropolitan Home Mortgage Cor of NY	Jericho	NY
MFC First National Bank	Marquette	MI
MFC First National Bank	Menominee	MI
Michigan Heritage Bank	Farmington Hills	MI
Mid County Mortgage Bankers Corp	Norwalk	CT
Midland Mutual Life Ins Co	Columbus	OH
Millennium Bank NA	Reston	VA
Minden Bank and Trust Company	Minden	LA
Money Guard Financial Inc	CHicago	IL
Money Line Classic Corp	Whittier	CA
Money Source Inc	Prairieville	LA
Moneyline Financial Corp	Hialeah	FL
Monument Mortgage Corporation	Largo	MD
Mortgage Company Inc	Stillwater	MN
Mortgage Finance of-America Inc	Miami	FL
Mortgage Group Inc	Littleton	CO
Mortgage Investors of Orlando Corp	Orlando	FL
Mortgage Junction Inc	Apopka	FL
Mortgage Lending LLC	Southaven	MS
Mortgage Lending Professionals LLC	Fort Collins	CO
Mortgage Money Doctors	Philadelphia	PA
Mortgage Money Mart Inc	Edison	NJ
Mortgage Network USA Inc	Burr Ridge	IL
Mortgage Partners Inc	Springfield	MO
Mortgage Professionals	West Des Moines	IA
Mortgage Reserve Corporation	Fort Lauderdale	FL

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Mortgage Resources Inc	Spokane	WA
Mortgage Servicing Company	Murray	UT
Mortgage.com Inc	Sunrise	FL
Motor Parts Federal Credit Union	Auburn Hills	MI
Mountain Pacific Mortgage	San Diego	CA
Mountainview Mortgage Corp	Salt Lake City	UT
Municipal Mortgage Corp	Miami	FL
Murrieta Financial Inc	Lake Elsinore	CA
Mutual Federal Savings Bank	Atlanta	GA
N K Equities	Ozone Park	NY
Naf Inc	Dallas	TX
National Bank	Hillsboro	IL
National Bank Commerce Trust Svgs Assn	Lincoln	NE
National Mortgage Co	Englewood	CO
Nationcorp Mortgage and Fin Services Inc	Baton Rouge	LA
Nationwide Residential Capital LLC	Santa Ana	CA
NC Funding Inc	Irvine	CA
New Community Fed Credit Union	Newark	NJ
New Farmers National Bank	Glasgow	KY
New Milford Bank and Trust	New Milford	CT
Neway Financial Services	No Plainfield	NJ
Newscope Financial Partners LLC	Irvine	CA
Northeastern Mortgage Ser Inc	Tyngsboro	MA
Northfield Federal Savings Bank	Baltimore	MD
Northfield Savings Bank FSB	Staten Island	NY
Northgate Funding Co	Albany	NY
Northland Mortgage Company	Anchorage	AK
Northland Security Bank	Ramsey	MN
Northwest Fidelity Mortgage Corp	Morton Grove	IL
Northwest Mortgage Professionals Inc	Silverdale	WA
Norwest Mortgage Mass Inc	Danvers	MA
Numax Mortgage Corporation	Germantown	MD
NW LLC	University Place	WA
Oceanmark Bank FSB–FDIC	North Miami Beach	FL
Ocwen Financial Services Inc	West Palm Beach	CA
Oklahoma Central Credit Union	Tulsa	OK
Old Castle Mortgage Inc	Alameda	CA
Old Florida Mortgage Inc	Boca Raton	FL
Old Kent Bank	Grand Rapids	MI
Olympic Mortgage Group Inc	McLean	VA
Omega Mortgage and Fin Corp	Saint Paul	MN
Omni Financial Services LLC	Birmingham	AL
One Valley Bank—Shenandoah	Lexington	VA
One Valley Bank Oak Hill Inc	Oak Hill	WV
Onloan.com Inc	Fort Lauderdale	FL
Origin Mortgage LLC	Austin	TX
Owensboro National Bank	Owensboro	KY
Pacific Capital Mortgage	Scottsdale	AZ
Pacific Exchange Mtg Lender	Woodland Hills	CA
Pacific Mortgage Inc	Ft Collins	CO
Pacific Rim Funding Inc	Torrance	CA
Pacific Southwest Bank FSB	Dallas	TX
Pacific State Bank	Stockton	CA
Palma Corporation	Las Vegas	NV
Pan American Bank FSB	San Mateo	CA
Park Bank	Madison	WI
Parkway Mortgage Inc	Kenilworth	NJ
Pathfinder Mortgage Company	Phoenix	AZ
PCLoans.com Inc	Millersville	MD
Peach State Funding Inc	Atlanta	GA
Peachtree National Bank	Peachtree City	GA
Peak National Bank	Evergreen	CO
Peoples Bank	Taos	NM
Peoples Bank Murray	Murray	KY
Peoples Benefit Life Insurance Co	Louisville	KY
Peoples Commercial Bank	Winchester	KY
Peoples State Bank	Fairmount	ND
Pinnacle Bank	Lexington	NE
Pinnacle Residential Funding	Sacramento	CA
Pinnacle Residential Services	Westlake	OH
Pioneer National Bank	Yakima	WA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Placer Savings and Loan Assn	Auburn	CA
Plains National Bank W TX	Lubbock	TX
Platinum Mortgage of Louisiana	Baton Rouge	LA
Plaza Mortgage Services LLC	Kansas City	MO
PMCC Mortgage Corp	Roslyn Heights	NY
Portland Federal Employees Credit Union	Portland	OR
Potomac Mortgage Corporation	Clinton	MD
Preferred Bank	Big Lake	MN
Preferred Funding Inc	Kirkland	WA
Preferred Mortgage Associates	Downers Grove	IL
Premier Capital Mortgage LLC	Lawrence	KS
Premier First Funding Group Inc	Hollywood	FL
Premier Lending Corporation	Marietta	GA
Premier Mortgage Corporation	Draper	UT
Premier Mortgage Corporation	Omaha	NE
Premier National Bank	Fishkill	NY
Prime Funding Corporation	North Miami Beach	FL
Prime Lending Inc	Sturgeon Bay	WI
Prime Mortgage Financial Inc	Wellesley	MA
Prime Point Mortgage Inc	Bellevue	WA
PrimeSource Financial LLC	Hollywood	FL
Professional Investment and FINL Group	Monterey Park	CA
Progressive Bank NA	Lexington	KY
Progressive Financial Inc	Southfield	MI
Providence Financial Corp Inc	Austin	TX
Provident Bank FSB	Saint Joseph	MO
Prudential Home Mortgage Co	Lagrange	IL
Pulaski Bank and Trust Company	Little Rock	AR
Quality Financing Corp	Chicago	IL
Quality Lending Services Inc	San Pablo	CA
Quality Mortgage Services	Hazelwood	MO
Quantum Mortgage Funding Inc	Cincinnati	OH
R F Mortgage Inc	San Diego	CA
Ravenna Savings and Loan Co	Ravenna	OH
Real Estate Lenders Inc	Santa Clarita	CA
Realco Funding Group LC	Annandale	VA
Red Valley Mortgage Inc	Mesa	AZ
Referral Finance.com Corporation	Austin	TX
Reliable Mortgage and Trust Inc	Hollywood	FL
Renaissance Mortgage	Southfield	MI
Republic Trust and Mortgage Inc	Largo	FL
Resource Bancshares Mortgage Group Inc	Columbia	SC
Resource One Federal Credit Union	Dallas	TX
Richland Group	Los Angeles	CA
Richmond Savings Bank SSB	Charlotte	NC
Ritz Financial Inc	Bensalem	PA
RMB Investment Inc	Marina Del Rey	CA
Rocky Mountain Mortgage LTD	Albuquerque	NM
Rose Hill State Bank	Rose Hill	KS
Royal Credit Industries Inc	Glendale	CA
Royal Mortgage Bankers Inc	Great Neck	NY
Ryans Express Equities Corp	East Meadow	NY
Saint Clair Mortgage Corp	Royal Oak	MI
San Jose Mortgage and Investments Corp	Jacksonville	FL
Sanmar Financial Group Inc	Long Beach	CA
Santiam Mortgage Corporation	Lebanon	OR
Saromar Enterprises Inc	Glendale	CA
SAS Financial Corporation	Santa Barbara	CA
SCE Federal Credit Union	Irwindale	CA
Schmitt Mortgage Co	Colorado Springs	CO
Sea Island Bank	Statesboro	GA
Seagull Financial Corp	Hialeah	FL
Security Bank	Madison	SD
Security Bank and Trust Co	Albany	GA
Security Bank Bibb County	Warner Robins	GA
Security Bank Southwest Missouri	Cassville	MO
Security First Bank	Cozad	NE
Security Mortgage of Louisiana Inc	Baton Rouge	LA
Select Mortgage Group Inc	Hialeah	FL
Select Mortgage LLC	East Meadow	NY
SFA Capital Ventures Inc	Northridge	CA

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
Shamrock Financial Corporation	East Providence	RI
Sheila Enterprises Inc	Monmoth Junction	NJ
Sierra Capital Funding LLC	Irvine	CA
Sierra Financial Inc	Rancho Cucamonga	CA
Smith-Haven Mortgage Corporation	Melville	NY
SNL Mortgage Inc	North Miami Beach	FL
SOBE Mortgage Corp	Delray Beach	FL
Sound Federal Savings & Loan	Mamaroneck	NY
South Atlantic Mortgage Services Inc	Orlando	FL
Southeast Mortgage Bankers	South Gate	CA
Southern Commerical Bank	St Louis	MO
Southern Security Bank Hollywood	Hollywood	FL
Southern United Mortgage	Oneonta	AL
Southland Lending Services	Huntington Beach	CA
Southland Mortgage Investment Group Inc	Gainesville	FL
Sovereign Mortgage Corporation	Sarasota	FL
Spectrum Mortgage Company LLC	Mokena	IL
Spectrum Mortgage Group Inc	Wayne	MI
Standard Mortgage Corporation	Rio Piedras	PR
Starbanc Corporation	San Diego	CA
State Bank and Trust of Seguin	Seguin	TX
State Bank Lucan	Lucan	MN
State Department Federal Credit Union	Alexandria	VA
State Department Federal Credit Union	Alexandria	VA
State National Bank Caddo Mill	Caddo Mills	TX
Stellar Mortgage LLC	Houston	TX
Sterling Bank	Montgomery	AL
Sterling Group LLC	Ridgefield	CT
Sterling Home Funding	Conyers	GA
Sterling International Corp	Chicago	IL
Sterling National Mortgage Corporation	Richmond	VA
Sturgis Federal Savings Bank	Sturgis	MI
Summit Financial Corp	Irvine	CA
Summit Mortgage Corp	Irvine	CA
Sun Security Bank of America	St Peters	MO
Sunpointe Mortgage Corporation	Hollywood	FL
Sunshine Mortgage Services	Jacksonville	FL
Suntrust Bank Chattanooga NA	Chattanooga	TN
Suntrust Bank South Florida NA	Sunrise	FL
Suntrust Bank Tampa Bay	Tampa	FL
Superior Mortgage Co Inc	Mesa	AZ
Telebank	Arlington	VA
Terre Haute First National Bank	Terre Haute	IN
The Mortgage Bank Inc	Miami	FL
The Quincy State Bank	Quincy	FL
The Loan Company Inc	Salt Lake City	UT
Thomaston Federal Savings Bank	Thomaston	GA
TLC Home Finance Inc Placentia	Placentia.	
Town and Country Mortgage LP	Woodland Hills	CA
Towne and Country Mortgage LLC	Midvale	UT
Traditional Mortgage Corp	Richmond Hill	NY
Trans Financial Group Inc	Cerritosa	CA
TSM Mortgage Servicing Corp	Colorado Springs	CO
Tuscaloosa Teachers Credit Union	Tuscaloosa	AL
U S Mortgage and Acceptance Corp	Tustin	CA
UCB Financial Corporation	Downey	CA
Union Bank Company	Columbus Grove	OH
Union Discount Mortgage Inc	Redondo Beach	CA
Union Funding USA Inc	Lake Forest	CA
Union Mortgage Services Inc	Troy	MI
Union National Bank of Westminster	Westminster	MD
Union Street Mortgage Inc	Modesto	CA
United Banc Financial Services Inc	Canton	OH
United Companies Funding Inc	Baton Rouge	LA
United Companies Lending Corp	Baton Rouge	LA
United Fidelity Bank FSB	Evansville	IN
United Home Savings LLC	Westminster	MD
United National Bank	Charleston	WV
Universal Lending Corp	Sacramento	CA
US Financial Ltd	Chicago	IL
USA Mortgage Corporation	Hudson	OH

683 TITLE 2 MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN APRIL 1, 2001 AND SEPTEMBER 30, 2001—Continued

Name	City	State
V Loan You Services Corp	Saint Paul	MN
Valentine Mortgage Corp	Diamond Bar	CA
Valley of Rogue Bank	Phoenix	OR
Value Financial Inc	Scotts Valley	CA
Vanguard Bank and Trust Company	Fort Walton Beach	FL
Vanguard Lending Group Inc	Atascadero	CA
Vantage Mortgage Service Center Inc	Sanford	FL
Venture West Funding Inc	El Segundo	CA
Veterans Choice Mortgage Inc	Martinez	GA
VHb Mortgage Company LLC	Fredericksburg	VA
Vista Mortgage Corp	Carmichael	CA
Walhalla State Bank	Walhalla	ND
Wall Street Capital Funding Inc	Conyers	GA
Wall Street Mortgage Corporation	Dallas	TX
Wall Street Residential Loans	Downey	CA
WEBTD.com	Woodlands Hills	CA
Welcome Home Mortgage Inc	Colorado Springs	CO
West Coast Guaranty Bank NA	Sarasota	FL
Western Home Lending Corporation	Montebello	CA
Western Mortgage Express	El Centro	CA
Western Nebraska National Bank	North Platte	NE
Whitley Mortgage Associates	Monroe	NC
Wood Products Credit Union	Springfield	OR
Woodforest National Bank	Conroe	TX
World Residential Mortgage Corp	Deerfield Beach	FL
World Wide Mortgage Corporation	Skokie	IL
Yosemite Brokerage Inc	Bridge City	TX
Zaring Financial Services LLC	Cincinnati	OH

Dated: February 19, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 02–5001 Filed 3–1–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP2–0104]

Meeting Notice of the Eastern Washington Advisory Council; March 21 2002, in Spokane, Washington

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: The Eastern Washington Resource Advisory Council (EWRAC) is scheduled to meet on March 21, 2002, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275. The meeting will convene at 9 a.m. and adjourn upon conclusion of business, but no later than 4 p.m. Public comments will be heard from 10 a.m. until 10:30 a.m. To accommodate all wishing to make public comments, a time limit may be placed on each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: RAC membership update, District Work Accomplishments for FY2001 and Work Program for FY2002, National Fire Plan Update, and future RAC meeting dates. A 15-minute round table discussion will be provided for general issues.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: February 11, 2002.

Joseph K. Buesing,

District Manager.

[FR Doc. 02–5048 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–PB–252Z]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on March 20, 2002 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include an update on current public land issues and an update on Colorado wilderness proposals.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Wednesday, March 20, 2002 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center Office, 3170 East Main Street, Canon City, Colorado 81212.

CONTACT: For further information contact Ken Smith at (719) 269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 15, 2002.

John L. Carochi,

Acting Royal Gorge Field Manager.

[FR Doc. 02–5049 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Tuesday, March 19, 2002, from 8:30 a.m. to 5:00 p.m. local time, and on Wednesday, March 20, 2002, from 8:30 a.m. to 5:00 p.m. local time.

Submit written comments pertaining to the Advisory Board meeting no later than close of business March 8, 2002.

ADDRESSES: The Advisory Board will meet at the Silver Legacy Hotel and Casino, 407 North Virginia Street, Reno, Nevada 89520.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Nordin at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Tuesday, March 19, 2002 (8:30–5:00)

Welcome—Elena Daly
Director, Bureau of Land Management
Introduction of New Board Members & Staff—Elena Daly
Group Manager Comments—John Fend
—Washington Staff Organization
—Charter & Nominations Update

Old Business (9:00–11:30)

BLM Action on May 2001 Recommendations—John Fend
Approval of May 2001 Board Minutes—Robin Lohnes
Trinidad Letter—Outcome—Sharon Kipping
WH&B Crisis Mgt. Strategy—Tom Pogacnik
WH&B National Reward Program—Tom Pogacnik
Wyoming Wild Horse Pilot Project—Don Glenn
Slaughter/Compliance/FOIA Issue —John Fend

Working Lunch (11:30 to 1:00)

WH&B Research Update—Linda Coates-Markle
—Fertility control
—URID/Strangles
—Genetics
—Census Modeling
—Habitat Assessments

Public Comment (4:00 PM)—Robin Lohnes

Adjourn

Wednesday, March 20, 2002 (8:30–5:00)

Strategic Plan: Progress Report—John Fend
—Budget Initiative Progress—John Fend
—Gather and Selective Removal IM—Tom Pogacnik
—Adoption Process Standardization—Janet Nordin
—Drought Projections—Tom Pogacnik

Working Lunch (11:30–1:00)

New Business

WH&B Foundation Update—Janet Nordin
BLM National Foundation—Elena Daly
WH&B Marketing Strategy/Report—Janet Greenlee
Corporate Identity
—National Themes/Slogans
—Olympics Venues—Successes
—Adoption Incentives
—Super Adoption Proposal
Close Out/Recommendations—Robin Lohnes
Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations (41 CFR 102–3.150) require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on March 19, 2002, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon on March 19, 2002, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: February 25, 2002.

Henri R. Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 02–5029 Filed 3–1–02; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–736 and 737 (Review)]

Large Newspaper Printing Presses From Germany and Japan

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in August 2001 to determine whether revocation of the antidumping duty orders on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany and Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On February 25, 2002, the Department of Commerce published notice that it was revoking the orders effective September 4, 2001 because ''the only domestic interested party withdrew its interest in both proceedings'' (67 FR 8523). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–205–3160), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server, *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By Order of the Commission.

Issued: February 26, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–5072 Filed 3–1–02; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 21–22, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Westward Look, 245 East Ina Road, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5030 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open hearing.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure has proposed amendments to Rule 1005 of the Federal Rules of Bankruptcy Procedure and to Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19. A public hearing on the amendments is scheduled to be held in Washington, DC, on April 12, 2002.

The Judicial Conference Committee on Rules of Practice and Procedure submits the rule and forms for public comment. All comments and suggestions with respect to the amendments must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than April 22, 2002. Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments on the proposed rule amendments and form revisions can be sent by one of the following three ways: by overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002; by electronic mail via the Internet at *http://www.uscourts.gov/rules;* or by facsimile to Peter G. McCabe at (202) 502–1755.

Notice of Open Hearing

In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules* on the Internet.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20002, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5031 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be

open to public observation but not participation.

DATES: April 22–23, 2002.

TIME: 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5032 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 19, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5033 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 6–7, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Park Hyatt San Francisco, 333 Battery Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION:

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5034 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 25–26, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 13, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5035 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 10–11, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 26, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–5036 Filed 3–1–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act, Toxic Substances Control Act, and Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on February 1, 2002, a proposed Consent Decree in *United States* v. *Transcontinental Gas Pipe Line Corp.,* Civil Action No. H–02–0387 was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought injunctive relief and civil penalties related to the natural gas pipeline owned and operated by Transcontinental Gas Pipe Line Corp. (Transco) which stretches from Texas to New York. In the Complaint, the United States seeks injunctive relief and civil penalties pursuant to Resource Conservation and Recovery Act (RCRA) section 3008(a), (g), and (h), 42 U.S.C. 6928(a), (g), and (h); Clean Water Act (CWA) Section 301(a), 33 U.S.C. 1311(a); and Toxic Substances Control Act (TSCA) sections 6 and 17, 15 U.S.C. 2605 and 2616. The United States resolves these claims in the proposed Consent Decree which also requires Transco to perform corrective action consisting of solid and groundwater cleanup of hazardous wastes along its pipeline; perform PCB cleanup work; complete a stormwater discharge monitoring program; and pay a civil penalty of $1.4 million.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department

of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Transcontinental Gas Pipe Line Corp.,* No. H–02–0387 (S.D. Tex.), D.J. Ref. 90–71–909.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis, Suite 1500, Houston TX 77002, and at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington DC 20004. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a full copy with all exhibits, please enclose a check in the amount of $85.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. When requesting a copy without exhibits, please enclose a check in the amount of $16.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–5082 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–5). Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the Service to determine participants in the Pilot Immigration program provided for by section 610 of the Appropriations Act. The Service will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4994 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: 60-Day Notice of information collection under review; Application for transfer of petition for naturalization, Form N–455.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a previously approved collection.*

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–455. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used by an applicant to request transfer to another court the petition for naturalization in accordance with section 405 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4995 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; Application to payoff or discharge alien crewman; I–408

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 5, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Application to Payoff or Discharge Alien Crewman.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–408. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge and any alien crewman in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85,000 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,360 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4996 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; supplementary statement for graduate medical trainees; Form I–644.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the

public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 3, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Supplementary Statement for Graduate Medical Trainees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–644. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4997 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Refugee/Asylee Relative Petition; Form I–730.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 2, 2002 at 67 FR 122, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–730, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms

Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4989 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act; Form I–693.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 16, 2001 at 66 FR 43031, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–693, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by the INS in considering eligibility for adjustment of status under section 209, 210, 245 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 90 minutes (1.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4990 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request.

ACTION: 30-Day notice of information collection under review: Immigration user fee.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 27, 2001 at 66 FR 59261, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Immigration User Fee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–1). Office of Finance, Immigration and Naturalization.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information requested from commercial air carriers, commercial vessel operators, and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of User Fee collections.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 325 responses at 15 minutes (.25) per response for reporting, in addition to 25 respondents at 10 hours per response for record keeping.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 331 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4991 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Document verification request and document verification request supplement, Forms G–845 and G–845 Supplement.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on August 16, 2001 at 66 FR 43027, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Document Verfication Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–845 and G–845 Supplement, SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. This form is used to check other agency records on applications or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applicants for adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 41,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms

Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4992 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 11, 2001 at 66 FR 51819, in an interim rule, INS No. 2106–00, RIN 1115–AG01. The preamble of the interim rule allowed for emergency OMB approval, as well as a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 3, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–25); Business and Trade Services Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected via the submitted supplemental documentation (as contained in 8 CFR 204.13(d)) will be used by the INS to determine eligibility for the requested classification as fourth preference employment-based immigrant broadcasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 26, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–4993 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement Document: Basic Guide to Jail Administration

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the development of a document that provides jail administrators a guide to the basics of assessing, directing, and improving their jail operations.

Background: There are over 3,000 jails in the United States, and the administrators of these facilities have widely varying backgrounds, experience, and expertise. Often, jail administrators come to their position with some background in general management techniques, but with minimal knowledge and skills in assessing, directing, and overseeing functions specific to jails. Many jail administrators have access to little or no training, since jail funding is frequently severely limited and the training budget is reduced to support other basic functions. As a result of this lack of experience and information, many jail

administrators cannot ensure their jails comply with legal mandates, their operations reflect effective and professional practices, or their scarce resources are efficiently used. In fact, without essential information on jail administration, many of those who oversee the nation's jails cannot even ensure their jails are safe and secure, and this puts staff, inmates, and the community at risk—and places the local government at high risk for liability.

The National Institute of Corrections offers training on jail administration, but is able to reach only a minority of the nation's jail administrators in this way. NIC also makes available a variety of documents on administration-related issues and refers jail administrators to other sources of information and services where appropriate. There is, however, no one document that can serve as a concise and practical guide to jail administration. Such a document will help fill a widespread information void among the nation's jail administrators.

Project Objectives: The National Institute of Corrections wishes to produce a basic guide to jail administration that can be widely disseminated to the nation's jails.

Scope of Work

Document Length: Approximately 150 pages in the body of the document, plus appendices

Document Audience: Administrators of jails of all sizes and all geographic locations, especially those administrators who are new to their positions or those who have been in their position for some time without benefit of training.

Use of Document: The document will be a practical guide to the assessment, direction, and oversight of local jails.

Document Distribution: NIC expects to distribute the document widely. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, jail administrators and other practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request and receive this document.

Document Content: The document will be a basic guide to jail administration. It must be concise, clear, and easily read and referenced. It must be of practical use to the jail administrator and provide information and assessment tools that will allow the administrator to evaluate and improve his/her jail operations. It is not intended to provide exhaustive information on each content topic; instead, it should provide a brief narrative on each topic with related assessment instruments and reference to other reading and resources for further information. The following is an outline of the content topics, at a minimum, to be included. This is not intended to dictate the organization of the manual, but to give applicants an idea of expected subject matter. NIC acknowledges that content and organization will evolve during document development, and applicants are encouraged to present their ideas about organization and content in their proposals.

For the purpose of this Request for Proposal, content topics are divided into three broad areas: (1) Introductory or general topics, (2) tools the jail administrator will apply in all areas of jail operations, and (3) specific jail functions.

Introductory Topics

The Role of the Jail in the Criminal Justice System

Inmates—a discussion of the legal status of jail inmates (pre-trial and sentenced, detention for various criminal justice agencies), the diversity of the population (gender, age, needs and risks among the inmate population), and the challenges this diversity presents to jail management.

The role of the jail administrator—an overview of the administrator's role in the jail and his/her role in areas that are external to, but affect, the jail.

Administrative liability and the basics of risk reduction.

First thirty days on the job: questions to ask and where to get the answers.

Planning, setting priorities, and making improvements.

For each introductory or general topic, the document should also include references to additional reading and resources.

Fundamental Tools in Jail Administration (tools applied to any jail function)

Jail standards—how standards are used in jail management; sources of standards.

Policies and procedures—how policies and procedures are used in jail management; developing, reviewing, and updating policies and procedures.

Resources—budget management strategies, non-fiscal resources available to jails.

Staffing—determining needs; justifying and presenting the staffing request.

Staff training—components of an effective staff training plan; training resources.

Assessments and audits, both internal and external—assessments and audits essential to jail management; how to use assessment and audit information to make improvements.

Documentation—the criticality, purposes, and uses of documentation in the jail.

For each of the ''fundamental tools'' topics, the document should also include strategies and instruments for assessing operations and references to additional reading and resources.

Jail Functions

For each of the following areas, the discussion should include: (1) Related legal requirements and standards, (2) effective practices, (3) strategies and tools for assessing operations, (4) strategies for improving operations (issues to consider, developing an action plan, resources needed), (5) strategies for measuring improvements, and (6) references to additional reading and resources.

Personnel management
Security
Emergency preparedness
Physical plant: safety, sanitation, and maintenance
Intake and release
Inmate supervision and behavior management, including classification
Inmate services
Inmate programs

Project Description: The awardee will produce a completed document that has received an initial edit from a professional editor. NIC will be responsible for the final editing process and document design, but the awardee will remain available during this time for questions and discussion. No travel will be required during the final edit.

Project Schedule: The list below shows the major activities required to complete the project. Document development will begin upon award of this agreement and must be completed twelve months after the award date. The schedule for completion of activities should include the following, at a minimum.

Meet with NIC staff for a project overview and initial planning for content
Review materials provided by NIC (awardee)
Complete initial outline of document content and layout (awardee)
Meet with NIC project staff to review, discuss, and agree on content outline
Research content topics and related resources (awardee)
Develop assessment tools related to content topics (awardee)
Submit draft sections of document to NIC for review (awardee)

Revise draft sections for NIC's approval (awardee)
Submit draft of entire document to NIC for review (awardee)
Revise document for NIC's approval (awardee)
Submit document to editor hired by awardee for first content edit (awardee)
Submit document to NIC in hard copy and on disk in Microsoft Word format (awardee)

Throughout the project period, the awardee should make provisions for meetings with NIC staff—to be held in Longmont, Colorado—at critical planning and review points in document development.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $60,000 (direct and indirect costs) and project activity must be completed within twelve months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this grant application should include, at a minimum:

A brief paragraph that indicates the applicant's understanding of the purpose of the document and the issues to be addressed;

A brief paragraph that summarizes the project goals and objectives;

A clear description of the methodology that will be used to complete the project and achieve its goals;

A statement or chart of measurable project milestones and time lines for the completion of each;

A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;

A description of the qualifications of the applicant organization and each project staff;

A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principals' and associates' relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application.

Deadline for Receipt of Applications: Applications must be received by 4 p.m. Eastern Time on Tuesday, April 16, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call (202) 307–3106 for pickup. Faxed or emailed applications will not be accepted.

ADDRESSES AND FURTHER INFORMATION: A copy of this announcement and the application forms may be obtained through the NIC Web site: *http.//www.nicic.org.* (click on ''Cooperative Agreements''). Requests for a hard copy of this announcement and the application forms should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Alan Richardson at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 143 or 303–682–0382, ext. 143, or by e-mail: *alrichardson@bop.gov.*

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

Indication of a clear understanding of the project requirements;

Background, experience, and expertise of the proposed project staff, including any subcontractors;

Effectiveness of the creative approach to the project;

Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;

Technical soundness of project design and methodology;

Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;

Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; Indication of availability to meet with NIC staff at key points in document development.

Number of Awards: One (1).

NIC Application Number: 02J18. This number should appear in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Executive Order 12372

This project is not subject to the provisions of Executive Order 12372.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: February 27, 2002.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–5076 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, March 4, 2002 & 8:30 a.m. to 12 noon on Tuesday, March 5, 2002.

Place: Portland Marriott Downtown, 1401 S.W. Naito Parkway, Portland, Oregon 97201.

Status: Open.

Matters to be Considered: Presentations on an initiative addressing transition from prison to community, including the Oregon Model and the Multnomah County Data Warehouse Project; election of new officers; division reports on FY 2003 Service Plan and FY 2004 budget recommendations; and update on Interstate Compact activities.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 02–5015 Filed 3–1–02; 8:45 am]

BILLING CODE 4410–36–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in *Charles F. Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board has appellate jurisdiction to review a final agency decision on an adverse action where the actual effective date of the action (here, the date when the employee would no longer be employed by the agency) has been stayed to allow exhaustion of administrative appeals (such as an appeal to the Board) pursuant to a collective bargaining agreement.

SUMMARY:

Background

The appellant in *Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1, received a letter on April 18, 2001, from the manager of the facility where he was employed removing him from his Air Traffic Control Specialist position for misconduct effective April 27, 2001. In the notice of removal, the agency informed the appellant that he could grieve the removal through the negotiated grievance procedure or appeal the matter to the Board. Citing the collective bargaining agreement between the agency and the National Air Traffic Controllers Association, an Association representative requested that the appellant be allowed to exhaust his appeal rights before the removal became effective. The relevant collective bargaining agreement provision states that the agency may allow an employee ''subject to removal or a suspension of more than fourteen (14) days the opportunity to exhaust all appeal rights available under this Agreement before the suspension or removal becomes effective.'' Statutory appeal rights to the Board are available under the agreement. In a May 7, 2001 letter, the deciding official in the appellant's removal approved the Association's request and stayed the appellant's removal. It is undisputed that the appellant remains in a pay and duty status.

Through his representative, the appellant filed an appeal of his removal. After allowing for argument from the parties, the administrative judge dismissed the appeal for lack of jurisdiction, reasoning that the appellant's removal had not been effected. The appellant has filed a petition for review arguing that the Board has jurisdiction over his appeal. The agency has responded in opposition to the petition.

Question To Be Resolved

This appeal raises the question of whether the Board has appellate jurisdiction to review an otherwise appealable action which has been subject to a final agency decision which, however, has been stayed pursuant to the terms of a collective bargaining agreement that allows the employee to exhaust administrative appeals, such as an appeal to the Board, before the adverse action becomes effective.

Issues To Be Considered In Resolving The Question Posed

Title 5 of the United States Code, section 1204(h), states that ''[t]he Board shall not issue advisory opinions,'' and title 5 of the United States Code, section 7513(d) provides that ''an employee against whom an action *is taken* under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.'' (Emphasis supplied.) These statutes raise the question of whether an adverse action ''is taken'' when a final decision is made or when the action actually is effectuated (for example, the date when the employee no longer is employed by the agency), and whether a Board decision on a final, but not yet effectuated, adverse action constitutes a prohibited advisory opinion.

Also relevant to the question raised in this appeal is the decision of the United States Court of Appeals for the District of Columbia Circuit in *National Treasury Employees Union* v. *Federal Labor Relations Authority*, 712 F.2d 669 (D.C. Cir. 1983). While the Board is not bound by decisions of the District of Columbia Circuit Court, the Board can look to such decisions for guidance. In *National Treasury Employees Union,* the court found that the Federal Labor Relations Authority erroneously reasoned in a negotiability decision that the Board lacked jurisdiction over an adverse action where the execution of the adverse action had been delayed under the terms of a collective bargaining agreement. The court concluded that the Customs Bureau was required to negotiate over a collective bargaining agreement provision similar to the one at issue here because the Board had jurisdiction over final, but not yet effected, actions.

Finally, the Board advises interested parties about the practice of the U.S. Postal Service where, pursuant to a collective bargaining agreement, the agency places employees in a non-pay, non-duty status after a removal action, even though the individual remains on the agency's rolls. The Board has considered this practice of placing employees in a non-pay, non-duty status, while still on the agency's rolls, and has held that it may exercise jurisdiction over such adverse actions by the Postal Service. *See Benjamin* v. *U.S. Postal Service*, 29 M.S.P.R. 555, 556–57 (1986); *see also Anderson* v. *U.S. Postal Service*, 67 M.S.P.R. 455, 457 (1995). Whether there is a distinction between allowing an employee to exhaust administrative appeals before the adverse action actually is effectuated and the practice of the U.S. Postal Service is one of the issues the Board will consider in addressing the question posed above.

DATE: All briefs in response to this notice shall be filed with the Clerk of the Board on or before March 22, 2002.

ADDRESSES: All briefs shall include the case name and docket number noted above (*Thomson* v. *Department of Transportation*, MSPB Docket No. AT–0752–01–0566–I–1) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M St., NW., Washington, DC 20419. Because of possible mail delays caused by the closure of the Brentwood Mail facility, respondents are encouraged to file by facsimile transmittal at (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, at (202) 653–7200.

Dated: February 26, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02–4974 Filed 3–1–02; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy (NIFL).

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Institute for Literacy Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 14, 2002 from 9:30 a.m. to 4:30 p.m. and March 15, 2002 from 9:30 a.m. to 1 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Telephone number (202) 233–2027, e-mail: *scoles@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is established under the Workforce Investment Act of 1998, Title II of Pub. L. 105–220, Sec. 242, the National Institute for Literacy. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Advisory Board 's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Advisory Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Advisory Board on the award of fellowships. The National Institute for Literacy Advisory Board meeting on March 14–15, 2002, will focus on future and current NIFL program activities, and other relevant literacy activities and issues. Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: February 26, 2002.

Sandra L. Baxter,

Interim Executive Director.

[FR Doc. 02–4961 Filed 3–1–02; 8:45 am]

BILLING CODE 6055–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Website: *www.nsf.gov/home/pubinfo/advisory.htm.* This information may also be requested by telephoning 703/292–8182.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–5061 Filed 3–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services; Notice of Intent To Prepare an Environmental Assessment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent to Prepare an Environmental Assessment for Amendment of Special Nuclear Material License SNM–124 for Nuclear Fuel Services, Inc., Erwin, Tennessee.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 to authorize new activities at the Nuclear Fuel Services, Inc. (NFS), facility located in Erwin, TN, and will prepare an Environmental Assessment to determine whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact.

Identification of the Proposed Action

NFS plans to request three amendments to their NRC license to authorize activities associated with the preparation of blended low-enriched uranium (BLEU) from surplus highly-enriched uranium from the U.S. Department of Energy. These activities would be performed under a contract with Tennessee Valley Authority (TVA) to provide low-enriched uranium fuel to be used in TVA's Brown's Ferry Nuclear Plant in Alabama. The Department of Energy prepared an Environmental Impact Statement to address the disposition of surplus highly enriched uranium (Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, DOE/EIS–0240, June 1996). NRC determined that this EIS did not specifically address the local environmental impacts of the construction of new storage and processing facilities in Erwin, Tennessee, and operation of these facilities, and that additional environmental review is necessary to support NRC's licensing actions.

In an amendment application to be submitted in February 2002, NFS will request authorization to store low-enriched uranyl nitrate solution in a new tank storage facility on the NFS plant site. In an amendment application to be submitted in July 2002, NFS will request authorization to perform dissolution of highly-enriched uranium/aluminum alloy and uranium metal and downblending of the resulting solution into low-enriched uranyl nitrate solution. In an amendment application

to be submitted in January 2003, NFS will request authorization to perform conversion of the low-enriched uranyl nitrate solution into uranium dioxide powder. NRC is preparing one Environmental Assessment that will address the environmental affects of all 3 future license amendments.

NFS submitted a licensing plan of action to the NRC in an attachment to a letter dated October 4, 2001, from B. Marie Moore, NFS, to the Director, Office of Nuclear Material Safety and Safeguards (NRC ADAMS Accession Number ML012850006). NRC acknowledged the licensing plan of action, with comment, in a letter dated December 31, 2001 (NRC ADAMS Accession Number ML020020117). NFS also submitted a Supplemental Environmental Report for Licensing Actions to Support the BLEU Project, dated November 9, 2001, (NRC ADAMS Accession Number ML013330459), and Additional Information to Support an Environmental Review for BLEU Project, dated January 15, 2002 (NRC ADAMS Accession Number ML020290471).

The Commission intends to prepare an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission will either conclude that an Environmental Impact Statement is necessary or will conclude that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' a copies of the relevant documents are available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

The NRC contact for this licensing action is Mary T. Adams. Ms. Adams may be contacted at (301) 415–7249 or by e-mail at *mta@nrc.gov* for more information about the licensing action.

Dated at Rockville, Maryland, this 25 day of February 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–5047 Filed 3–1–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) License Nos. (as shown in Attachment 1) EA–02–026]

All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

I

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and 10 CFR part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the generalized high-level threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures should be required to be implemented by licensees as prudent, interim measures, to address the generalized high-level threat environment in a consistent manner throughout the nuclear reactor community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 [1] of this Order, on all operating power reactor licensees. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current generalized high-level threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to specifically accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although the licensees' responses to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the responses must be supplemented because the generalized high-level threat environment has persisted longer than expected, and as a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current, generalized high-level threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, it is hereby ordered effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:

[1] Attachment 2 contains safeguards information and will not be released to the public.

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation no later than August 31, 2002.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission, when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 50.54(p), all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific plant, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 25th day of February 2002.
For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Region I Operating Power Plants—Senior Executive Contacts

Robert F. Saunders
President and Chief Nuclear Officer
Beaver Valley Power Station, Units 1 & 2
Docket Nos. 50–334 & 50–412
License Nos. DPR–66 & NPF–73
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Charles Cruse
Vice President—Nuclear Energy
Calvert Cliffs Nuclear Power Plant Units 1 & 2
Docket Nos. 50–317 & 50–318
License Nos. DPR–53 & DPR–69
Constellation Energy Group, Inc.
1650 Calvert Cliffs Pkwy
Office 2–OTF
Lusby, MD 20657

Harold W. Keiser
Chief Nuclear Officer & President
Hope Creek Generating Station
Docket No. 50–354
License No. NPF–57
PSEG Nuclear LLC—N09
Foot of Buttonwood Ave
Hancocks Bridge, NJ 08038

Michael Kansler
Senior Vice President and Chief Operating Officer
Indian Point Nuclear Generating Station, Unit Nos. 2 & 3
Docket Nos. 50–247 & 50–286

License Nos. DPR–26 & DPR–64
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
Michael Kansler
Senior Vice President and Chief Operating Officer
James A. Fitzpatrick Nuclear Power Plant
Docket No. 50–333
License No. DPR–59
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Limerick Generating Station, Units 1 & 2
Docket Nos. 50–352 & 50–353
License Nos. NPF–39 & NPF–85
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

David Christian
Senior Vice President—Nuclear Operations and Chief Nuclear Officer
Millstone Nuclear Power Station, Unit Nos. 2 & 3
License Nos. DPR–65 & NPF–49
Docket Nos. 50–336 & 50–423
Dominion Nuclear Energy
Innsbrook Technical Center—2SW
5000 Dominion Boulevard
Glenn Allen, VA 23060

Raymond Wenderlich
Senior Constellation Nuclear Officer
Nine Mile Point Nuclear Station, Unit Nos. 1 & 2
Docket Nos. 50–220 & 50–410
License Nos. DPR–63 & NPF–69
1997 Annapolis Exchange Parkway
Annapolis, MD 21401

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Oyster Creek Nuclear Generating Station
Docket No. 50–219
License No. DPR–16
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Peach Bottom Atomic Power Station, Units 2 & 3
Docket Nos. 50–277 & 50–278
License Nos. DPR–44 & DPR–56
Exelon Generation Company
4300 Winfield Road
Warrenville, IL 60555

Michael Kansler
Senior Vice President and Chief Operating Officer
Pilgrim Nuclear Power Station Unit No. 1
Docket No. 50–293
License No. DPR–35
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Paul C. Wilkens
Sr. Vice President Energy Operations
R. E. Ginna Nuclear Power Plant
Docket No. 50–244
License No. DPR–18
Rochester Gas & Electric Corporation
89 East Avenue
Rochester, NY 14649

Harold W. Keiser
Chief Nuclear Officer & President
Salem Nuclear Generating Station, Units 1 & 2
Docket Nos. 50–272 & 50–311
License Nos. DPR–70 & DPR–75
PSEG Nuclear LLC–N09
Foot of Buttonwood Ave
Hancocks Bridge, NJ 08038

Ted C. Feigenbaum
Executive Vice President & Chief Nuclear Officer
Seabrook, Unit 1
Docket No. 50–443
License No. NPF–86
North Atlantic Energy Service Corp.
c/o Mr. James M. Peschel
Rt. 1 Lafayette Rd
Seabrook, NH 03874

Robert G. Byram
Senior Vice President & Chief Nuclear Officer
Susquehanna Steam Electric Station, Units 1 & 2
Docket Nos. 50–387 & 50–388
License Nos. NPF–14 & NPF–22
PPL Susquehanna, LLC
2 North Ninth Street
Allentown, PA 18101

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Three Mile Island Nuclear Station, Unit 1
Docket No. 50–289
License No. DPR–50
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Ross P. Barkhurst
President and Chief Executive Officer
Vermont Yankee Nuclear Power Station
Docket No. 50–271
License No. DPR–28
Vermont Yankee Nuclear Power Corporation
185 Old Ferry Road
Brattleboro, VT 05302–7002

Region II Operating Power Plants—Senior Executive Contacts

John A. Scalice
Chief Nuclear Officer and Executive Vice President
Browns Ferry Nuclear Plant, Units 1, 2 & 3
Docket Nos. 50–259, 50–260 & 50–296
License Nos. DPR–33, DPR–52 & DPR–68
Tennessee Valley Authority
6A Lookout Place 1101 Market Street
Chattanooga, TN 37402–2801

C. S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Brunswick Steam Electric Plant Units 1 & 2
Docket Nos. 50–325 & 50–324
License Nos. DPR–71 & DPR–62
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

Michael S. Tuckman
Executive Vice President Nuclear Generation
Catawba Nuclear Station, Units 1 & 2
Docket Nos. 50–413 & 50–414
License Nos. NPF–52 & NPF–62
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

C.S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Crystal River Unit 3 Nuclear Generating Plant
Docket No. 50–302
License No. DPR–72
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

W.G. Hairston, III
President and Chief Executive Officer
Edwin I. Hatch Nuclear Plant Units 1 & 2
Docket Nos: 50–321 & 50–366
License Nos. DPR–57 & NPF–5
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

C. S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
H.B. Robinson Steam Electric Plant, Unit No. 2
Docket No. 50–261
License No. DPR–23
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

W.G. Hairston, III
President and Chief Executive Officer
Joseph M. Farley Nuclear Plant, Units 1 & 2
Docket Nos. 50–348 & 50–364
License Nos. NPF–2 & NPF–8
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

David Christian
Sr. Vice President Nuclear and Chief Nuclear Officer
North Anna Power Station, Units 1 & 2
Docket Nos. 50–338 & 50–339
License Nos. NPF–4 & NPF–7
Virginia Electric & Power Company
5000 Dominion Blvd.
Glen Allen, VA 23060–6711

Michael S. Tuckman
Executive Vice President Nuclear Generation
Oconee Nuclear Station, Units 1, 2 & 3
Docket Nos. 50–269, 50–270 & 50–287
License Nos. DPR–38, DPR–47 & DPR–55
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

John A. Scalice
Chief Nuclear Officer and Executive Vice President
Sequoyah Nuclear Plant, Units 1 & 2
Docket Nos. 50–327 & 50–328
License Nos. DPR–77 & DPR–79
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402–2801

C.S. (Scotty) Hinnant
Senior Vice President and Chief Nuclear Officer
Shearon Harris Nuclear Power Plant, Unit 1
Docket No. 50–400
License No. NPF–63
Progress Energy, Inc.
410 South Wilmington St.
Raleigh, NC 27601

J. A. Stall
Senior VP—Nuclear and Chief Nuclear Officer
St. Lucie Plant Units 1 & 2

Docket Nos. 50–335 & 50–389
License Nos. DPR–67 & NPF–16
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408–0420

David Christian
Sr. Vice President Nuclear and Chief Nuclear Officer
Surry Power Station, Unit 1 & 2
Docket Nos. 50–280 & 50–281
License Nos. DPR–32 & DPR–37
Virginia Electric & Power Company
5000 Dominion Blvd.
Glen Allen, VA 23060–7611

J. A. Stall
Senior VP—Nuclear and Chief Nuclear Officer
Turkey Point Units 3 & 4
Docket Nos. 50–250 & 50–251
License Nos. DPR–31 & DPR–41
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408–0420

Steve Byrne
Senior Vice President—Nuclear Operations
Virgil C. Summer Nuclear Station, Unit 1
Docket No. 50–395
License No. NPF–12
South Carolina Electric & Gas Company
Braham Blvd. at Hwy 215
Jenkinsville, SC 29065

W.G. Hairston, III
President and Chief Executive Officer
Vogtle Electric Generating Plant, Units 1 & 2
Docket Nos. 50–424 & 50–425
License Nos. NPF–68 & NPF–81
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

John A. Scalice
Chief Nuclear Officer & Executive Vice President
Watts Bar Nuclear Plant, Unit 1
Docket No. 50–390
License No. NPF–90
TVA, 6A Lookout Place
1101 Market Street
Chattanooga, TN 37402–2801

Michael S. Tuckman
Executive Vice President Nuclear Generation
William B. McGuire Nuclear Station Units 1 & 2
Docket Nos. 50–369 & 50–370
License Nos. NPF–9 & NPF–17
Duke Energy Corporation
526 South Church St
Mail Code EC 07 H
Charlotte NC 28242

Region III Operating Power Plants—Senior Executive Contacts

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Byron Station, Units 1 & 2/Braidwood Station, Units 1 & 2
Docket Nos. 50–454 & 50–455 (Byron), 50–456 & 50–457 (Braidwood)
License Nos. NPF–37 & NPF–66 (Byron), NPF–72 & NPF–77 (Braidwood)
Exelon Generation Company, LLC 4300 Winfield Road
Warrenville, IL 60555

Oliver D. Kingsley, Jr.
Chief Nuclear Officer
Clinton Power Station, Unit 1
Docket No. 50–461
License No. NPF–62
AmerGen Energy Company, LLC
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Robert F. Saunders
President and Chief Nuclear Officer
Davis-Besse Nuclear Power Station, Unit 1
Docket No. 50–346
License No. NPF–3
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

A. Christopher Bakken
Senior Vice President and Chief Nuclear Officer
Donald C. Cook Nuclear Plant, Units 1 & 2
Docket Nos. 50–315 & 50–316
License Nos. DPR–58 & DPR–74
Indiana Michigan Power Company
Nuclear Generation Group
500 Circle Drive
Buchanan, MI 49107

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Dresden Nuclear Power Station, Units 2 & 3
Docket Nos. 50–237 & 50–249
License Nos. DPR–19 & DPR–25
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Michael B. Sellman
President and Chief Executive Officer
Duane Arnold Energy Center
Docket No. 50–331
License No. DPR–49
Nuclear Management Company, LLC
700 First Street
Hudson WI 54016

Douglas R. Gibson
Executive Vice President, Power Generation and Chief Nuclear Officer
Fermi, Unit 2
Docket No. 50–341
License No. NPF–43
Detroit Edison Company
2000 Second Avenue
Detroit, MI 48226

Michael B. Sellman
Chief Executive Officer
Kewaunee Nuclear Power Plant
Docket No. 50–305
License No. DPR–43
Nuclear Management Company, LLC
700 First Street
Hudson WI 54016

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
LaSalle County Station, Units 1 & 2
Docket Nos. 50–373 & 50–374
License Nos. NPF–11 & NPF–18
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Michael B. Sellman
President and CEO
Monticello Nuclear Generating Plant
Docket No. 50–263
License No. DPR–22
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Michael B. Sellman
President and CEO
Palisades Plant
Docket No. 50–255
License No. DPR–20
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Robert F. Saunders
President and Chief Nuclear Officer
Perry Nuclear Power Plant, Unit 1
Docket No. 50–440
License No. NPF–58
FirstEnergy Nuclear Operating Company
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Michael B. Sellman
President and CEO
Point Beach Nuclear Plant, Units 1 & 2
Docket Nos. 50–266 & 50–301
License Nos. DPR–24 & DPR–27
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Michael B. Sellman
President and CEO
Prairie Island Nuclear Generating Plant, Units 1 & 2
Docket Nos. 50–282 & 50–306
License Nos. DPR–42 & DPR–60
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Oliver D. Kingsley, Jr.
President and Chief Nuclear Officer
Quad Cities Nuclear Power Station, Units 1 & 2
Docket Nos. 50–254 & 50–265
License Nos. DPR–29 & DPR–30
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Region IV Operating Power Plants—Senior Executive Contacts

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Arkansas Nuclear One—Units 1 & 2
Docket Nos: 50–313 & 50–368
License Nos. DPR–51 & NPF–6
Entergy Operations Inc.
1340 Echelon Parkway
Jackson, MS 39213

G. L. Randolph
Sr. Vice President—Generation and Chief Nuclear Officer
Callaway Plant, Unit 1
Docket No. 50–483
License No. NPF–30
AmerenUE Corporation
Callaway Nuclear Plant
Junction Hwy CC & Hwy O
Portland, MO 65067

J. V. Parrish
Chief Executive Officer
Columbia Generating Station
Docket No. 50–397
License No. NPF–21
Energy Northwest
MD 1023
Snake River Warehouse
North Power Plant Loop
Richland, WA 99352

C. Lance Terry
Senior Vice President and Principal Nuclear Officer
Comanche Peak Steam Electric Station, Units 1 & 2
Docket Nos. 50–445 & 50–446
License Nos. NPF–87 & NPF–89
TXU Management Company LCC
Managing Partner for TXU Generation Company LP
FM 56
5 Miles North of Glen Rose
Glen Rose, Texas 76043

David L. Wilson
Vice President of Nuclear
Cooper Nuclear Station
Docket No. 50–298
License No. DPR–46
Nebraska Public Power District
2 Miles South of Brownsville
Brownsville, NE 68321

Gregory M. Rueger
Senior Vice President Generation and Chief Nuclear Officer
Diablo Canyon Nuclear Power Plant Units 1 & 2
Docket Nos. 50–275 & 50–323
License Nos. DPR–80 & DPR–82
Pacific Gas and Electric Company
77 Beale Street, 32nd Floor
San Francisco, California 94105

W. Gary Gates
Vice President for Nuclear Operations
Fort Calhoun Station, Unit 1
Docket No. 50–285
License No. DPR–40
Omaha Public Power Dist.
444 South 16th Street Mall
Omaha, NE 68102–2247

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Grand Gulf Nuclear Station, Unit 1
Docket No. 50–416
License No. NPF–29
Entergy Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

James M. Levine
Executive Vice President and Chief Operating Officer
Palo Verde Nuclear Generating Station, Units 1, 2 & 3
Docket Nos. 50–528, 50–529 & 50–530
License Nos. NPF–41, NPF–51 & NPF–74
Arizona Public Service Company
400 North 5th Street, MS 9046
Phoenix, AZ 85004

Gary J. Taylor
Senior Vice President and Chief Operating Officer
River Bend Station
Docket No. 50–458
License No. NPF–47
Entergy Operations Inc.
1340 Echelon Parkway
Jackson, MS 39213

Harold B. Ray
Executive Vice President
San Onofre Nuclear Station, Units 2 & 3
Docket Nos. 50–361 & 50–362
License Nos. NPF–10 & NPF–15
Southern California Edison Company
8631 Rush Street
Rosemead, CA 91770

William T. Cottle
President and Chief Executive Officer
South Texas Project, Units 1 & 2
Docket Nos. 50–498 & 50–499
License Nos. NPF–76 & NPF–80
STP Nuclear Operating Company
South Texas Project
Electric Generating Station
8 Miles west of Wadsworth, on FM 521
Wadsworth, TX 77483

Gary J. Taylor
Senior Vice President and Chief Operating Officer
Waterford Steam Electric Generating Station, Unit 3
Docket No. 50–382
License No. NPF–38
Entergy Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

Otto L. Maynard
President and Chief Executive Officer
Wolf Creek Generating Station, Unit 1
Docket No. 50–482
License No. NPF–42
Wolf Creek Nuclear Operating Corporation
1550 Oxon Lane NE.
Burlington, KS 66839

[FR Doc. 02–5046 Filed 3–1–02; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 24, Amending OMB Circular No. A–76, ''Performance of Commercial Activities''

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: This Transmittal Memorandum updates the annual Federal pay raise assumptions and inflation factors used for computing the government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 2003.

DATES: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the government's in-house cost estimate has not been publicly revealed before this date.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Tel. No. (202) 395–6104.

Availability: Copies of the OMB Circular A–76, its Revised Supplemental Handbook and currently applicable Transmittal Memoranda changes may be obtained at the online OMB Homepage address (URL): *http://www.whitehouse.gov/WH/EOP/omb/circulars.*

Mitchell E. Daniels, Jr.,
Director.

February 26, 2002.
Circular No. A–76 (Revised)
Transmittal Memorandum No. 24

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities.

This Transmittal Memorandum updates the annual federal pay raise assumptions and inflation factors used for computing the government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 2003.

The non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the fiscal year 2003 budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

FEDERAL PAY RAISE ASSUMPTIONS

Effective date	Percent	
	Civilian	Military
January:		
2001	3.7	3.7
2002	4.6	[1] 6.9
2003	2.6	4.1
2004	3.4	3.4
2005	3.4	3.4
2006	3.4	3.4
2007	3.4	3.4
2008	3.4	3.4
2009	3.4	3.4
2010	3.4	3.4
2011	3.4	3.4
2012	3.4	3.4

[1] Average of various longevity- and rank-specific increases for January 2002.

NON-PAY CATEGORIES (SUPPLIES AND EQUIPMENT, ETC.)

Fiscal year	Percent
2001	2.3
2002	2.2
2003	1.8
2004	1.7
2005	1.8
2006	1.9
2007	1.9

NON-PAY CATEGORIES (SUPPLIES AND EQUIPMENT, ETC.)—Continued

Fiscal year	Percent
2008	1.9
2009	1.9
2010	1.9
2011	1.9
2012	1.9

The pay rates (including geographic pay differentials) that are in effect for 2002 shall be included for the development of in-house personnel costs. The pay raise factors provided for 2003 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provides the Revised Supplemental Handbook, and is dated March 27, 1996 (Federal Register, April 1, 1996, pages 14338–14346). Transmittal Memoranda No. 16, 17, 18 and 19 (to the extent they provided Circular A–76 federal pay raise and inflation factors) are canceled. Transmittal Memorandum No. 20 provided changes to the Revised Supplemental Handbook to implement the Federal Activities Inventory Reform Act of 1998 (P.L. 105.270). Transmittal Memorandum No. 21 provided A–76 federal pay raise and inflation factor assumptions and is canceled. Transmittal Memorandum No. 22 made technical changes to the Revised Supplemental Handbook regarding the implementation of the FAIR Act, A–76 administrative appeals, and the participation of directly affected employees on A–76 Source Selection Boards and their evaluation teams. Transmittal Memorandum No. 23, which provided last year's Circular A–76 federal pay raise and inflation factor assumptions, is hereby canceled.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–4998 Filed 3–01–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: On January 3, 2002, OMB published Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. Paragraph IV.3 of these Guidelines calls upon each agency to ''prepare a draft report, no later than April 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information disseminated by the agency.'' Paragraph IV.4 calls upon each agency to ''publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment.'' This notice announces an extension of that April 1, 2002, deadline to May 1, 2002. Agencies should now ''prepare a draft report, no later than May 1, 2002,'' providing the material called for in these Guidelines.

DATES: *Effective Date:* March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Brooke J. Dickson, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3785 or by e-mail to *informationquality@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) published proposed guidelines in the **Federal Register** on June 28, 2001 (66 FR 34489). OMB published final guidelines in the **Federal Register** on September 28, 2001 (66 FR 49718), and republished the final guidelines, with amendments, on January 3, 2002 (67 FR 369) and corrections thereto on February 5, 2002 (67 FR 5365).

This extension of the April 1, 2002, deadline to May 1, 2002, provides agencies additional time to develop and prepare their draft guidelines. While some agencies may be ready to release their draft guidelines for public review and comment prior to May 1, 2002, others have requested additional time.

Dated: February 25, 2002.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 02–4999 Filed 3–1–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45471; File No. SR–Amex–2001–56]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change Relating to the Recording of Images, Sounds, or Data on the Trading Floor of the Exchange

February 22, 2002.

On August 1, 2001, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Article II, Section 3 of the Amex Constitution, to control the recording of images, sound, or data on the Trading Floor. On January 15, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 1, 2002.[4] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (January 14, 2002) (''Amendment No. 1''). In Amendment No. 1, the Amex limited its proposed rule language to recording of images, sound or data ''on the Trading Floor'' (rather than ''on the premises of the Exchange'').

[4] *See* Securities Exchange Act Release No. 45333 (January 25, 2002), 67 FR 5015.

[5] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

of the Act.[7] Section 6(b)(5)[8] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will promote just and equitable principles of trade by protecting any rights the Exchange may have with regard to images and sounds emanating from the Trading Floor and by promoting the orderly conduct of business on the Trading Floor.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. Because no comments were received and because the proposed rule change will promote just and equitable principles of trade, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[9] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–Amex–2001–56) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5062 Filed 3–1–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3394]

State of Oklahoma; Amendment # 2

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to April 8, 2002.

The deadline for filing applications for economic injury has also been extended to November 7, 2002. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 26, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–5050 Filed 3–1–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3934]

Culturally Significant Objects Imported for Exhibition Determinations: ''20th Century Avant-Garde Drawings From the State Russian Museum''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''20th Century Avant-Garde Drawings from the State Russian Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Northeast Document Conservation Center, Andover, Massachusetts, from on or about April 8, 2002, to on or about April 30, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: February 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–5098 Filed 3–1–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 14, 2001, pages 57149–57140.

DATES: Comments must be submitted on or before April 3, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certificated Training Centers, Simulator Rule.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0570.

Form(s) AAA Form 8400–8, Operations Specifications.

Affected Public: A total of 75 training center certificate holders.

Abstract: To determine regulatory compliance, there is a need to maintain records of certain training and recency of experience; there is a need for training centers to maintain records of student training, employee qualification and training, and training program approvals. The information is used to determine compliance with airmen certification and testing to ensure safety.

Estimated Annual Burden Hours: An estimated 6,822 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory

[7] 15 U.S.C. 78f(b)(5).

[8] Id.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 27, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–5120 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–14]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 27, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 02–5121 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–13]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 25, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–P2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, including a self-addressed, stamped postcard.

You must also submit comments through the Internet to *http://dma.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dma.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on February 27, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11134.

Petitioner: Lufthansa Technik AG.

Section of 14 CFR Affected: 14 CFR 25.785(j)

Description of Relief Sought: To allow Lufthansa Technik to configure the Boeing Model 737–800 airplane for private, not-for-hire use and be exempted, in the configuration of the interior areas specified as the ''Private Bedroom'' and the ''First Class'' sections, from the requirement for a ''firm handhold along each aisle.''

[FR Doc. 02–5122 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a new working group for the aging Transport Systems Rulemaking Advisory Committee.

SUMMARY: This action gives notice of the formation of a new harmonization working group to assist the Aging Transport Systems Rulemaking Advisory Committee with investigating and developing recommendations to enhance the safety of electrical wiring systems in small transport airplanes.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Manager, Airplane and Flight Crew Interface Branch, ANM–111, Executive Director of ATSRAC, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055; telephone (425) 227–2589 or fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

In response to the White House Commission on Aviation Safety and Security, the Federal Aviation Administration (FAA) formed the Aging Non-Structural Systems Study Team, which developed the FAA's approach to

improving the management of aging wire systems. To assist in fulfilling the actions specified in the Aging Non-Structural Systems Plan, the FAA established an Aging Transport Systems Rulemaking Advisory Committee (ATSRAC) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on airplane system safety issues like aging wire systems. The FAA initially tasked ATSRAC in 1998 with the following five tasks, with the goal of developing recommendations to enhance airplane electrical wiring systems:

1. Collect data on aging wiring systems through airplane inspections.
2. Review airplane manufacturer's service information.
3. Review operators' maintenance programs.
4. Review manufacturers' Standard Practices for Wiring.
5. Review air carrier and repair station training programs.

It is important to note that the results from the initial taskings indicate that problems associated with systems on aging airplanes are not completely related to the degradation over time of wire systems. Inadequate installation and maintenance practices can lead to what is commonly referred to as an ''aging system'' problem. As such, the scope of the ATSRAC is not limited solely to age-related issues but includes improving the continued airworthiness of airplane systems, and, in particular, electrical wire systems.

In 2001, the FAA tasked the ATSRAC with four new tasks to facilitate the implementation of the recommendations, which were primarily based on the review of data related to large transport airplanes, from the initial five tasks. To help develop its reports in response to the new tasks, the ATSRAC established four harmonization working groups.

This notice informs the public of the formation of one additional ATSRAC harmonization working group, the Small Transport Airplane Harmonization Working Group. The ATSRAC has chosen to establish a new harmonization working group to provide technical support in developing its recommendations to the FAA. This group will establish working methods to ensure coordination among the four existing groups and coordination with working groups established by the Aviation Rulemkaing Advisory Committee. This coordination is required to ensure efficient use of resources, continuity in related decisions, and the reduction of duplication of effort.

New Harmonization Working Group and Assigned Tasks

The Small Transport Airplane Harmonization Working Group should be comprised of persons who have expertise in small aircraft (i.e., aircraft with 6–30 passenger seats and a maximum payload capacity of 7,500 pounds or less) design, maintenance, or operations. The group will—

1. Investigate the applicability of previous ATSRAC recommendations to small transport airplane electrical wire systems; and

2. Identify issues unique to these systems and recommend appropriate actions based on results from—

- Performing a sample inspection of in-service and retired small transport airplanes that correlate to the inspection previously performed under the original task 1 and task 2 of the ATSRAC;
- Reviewing fleet-service history to identify trends or areas for actions; and
- Coordinating with other ATSRAC Harmonization Working Groups to ensure that the ATSRAC reports to the FAA consider the needs of small transport airplanes.

The working group will serve as staff to the ATSRAC to assist the Committee in writing technical reports that will allow the FAA to complete its development of associated rulemaking language and advisory material. Working group documents will be reviewed, deliberated, and approved by the ATSRAC. If the ATSRAC accepts the working group's documents, the Committee will forward them to the FAA as ATSRAC recommendations.

In addition to coordinating with other working groups, the Small Transport Airplane Harmonization Working Group should coordinate with various organizations and specialists, as appropriate. And, if the group identifies a need for new working groups, when existing groups do not have the appropriate expertise to address certain tasks, it should inform the Committee.

Working Group Activity

The working group is expected to comply with the procedures adopted by ATSRAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration by the ATSRAC, following the establishment and selection of the working group.

2. Give a detailed conceptual presentation of proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft a report and/or any other collateral documents the working group determines to be appropriate and submit them to the ATSRAC for review and approval by January 2003.

4. Provide a status report at each meeting of the ATSRAC.

Participation in the Working Group

The working group will be composed of experts having an interest in the assigned tasks. Participants in the working group should be prepared to devote a significant portion of their time to the ATSRAC task through January 2003. A working group member need not be a representative or a member of the ATSRAC.

An individual who has expertise in the subject matter and who wishes to become a member of the Small Transport Airplane Harmonization Working Group should contact: Charles Huber (see **FOR FURTHER INFORMATION CONTACT** section of this notice), expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than (30 days following publication of this notice). The ATSRAC Chair, the Executive Director, and the working group Co-Chairs will review the requests, and the individuals will be advised whether or not their requests can be accommodated.

The Secretary of Transportation has determined that the formation and use of ATSRAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ATSRAC will be open to the public. Meetings of the individual working groups will not be open to the public, except to the extent those individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on February 25, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–5115 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss a task concerning ratings for aeronautical repair stations.

DATES: The meeting will be held on March 11–12, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and presentations no later than 3 business days before a meeting.

ADDRESSES: The meetings will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meeting will be held March 11–12, 2002, from 9 a.m. to 5 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22134–2818. The committee will discuss ratings for aeronautical repair stations.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification no later than 3 business days before the meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at a meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on February 26, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–5097 Filed 2–27–02; 2:16 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Campbell County, VA and City of Lynchburg

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) in cooperation with the Virginia Department of Transportation (VDOT) for a proposed Route 29 South Bypass Improvement Project in Campbell County and the City of Lynchburg to address safety and capacity issues and to enhance mobility and economic competitiveness.

FOR FURTHER INFORMATION CONTACT: Jerry Combs, Transportation Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone (804) 775–3340 or Jeffrey L. Rodgers, Environmental Specialist II, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia, 23219–2000, Telephone (804) 371–6785.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the VDOT, will prepare an EIS for the proposed Route 29 South Bypass Improvement Project in Campbell County and City of Lynchburg. The proposed project would connect Route 29 south of Lynchburg with Route 460 and the Route 29 Madison Heights Bypass east of Lynchburg with a combination of improvements including the construction of a four-lane divided limited access highway on new location and the improvement of existing facilities. Where alternatives overlap existing Route 460, a six-to-eight lane typical section on Route 460 would be necessary. The length of the proposed improvement ranges from 12.8 miles to 21 miles depending upon the alternative being considered.

Recognizing that the National Environmental Policy Act (NEPA) process requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for study consisting of a no-build alternative as well as five build alternatives with each consisting of improvements to existing roadways and new alignment facilities. Other alternatives, such as mass transit, transportation system management options, access management, upgrade of existing facilities and other alignments to the east and to the west considered and eliminated from consideration as reasonable alternatives. The five build alternatives and the no-build alternative will be forwarded for analysis in the draft EIS based on their ability to address the purpose and need while avoiding known and sensitive resources.

Route 29 is a designated corridor of national and state significance with the South Lynchburg Bypass being recognized as a key element with needed improvements. Location and environmental studies began as far back as 1994. A citizen information meeting was held in January 1994 to solicit input for the studies and again on January 19 and 21, 1999, to discuss the eastern and western alternatives that were developed as a result of the comments received from the first meeting. This proposed project was presented at the regularly scheduled VDOT interagency coordination meeting on February 16, 1999. Partnering meetings were held on May 18 and September 21, 1999. This EIS will build upon the scoping, engineering, and environmental work as well as the public involvement effort conducted to date. Coordination with the appropriate Federal, State, and local agencies, private organizations, citizens, and interest groups who have expressed or are known to have an interest in this proposal will continue.

Notices of public hearing will be given through various forums providing the time and place of the meeting along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are identified and taken into account,

comments and input are invited from all interested parties. Comments and questions concerning the proposed action and draft EIS should be directed to FHWA at the address provided above and should be submitted within 30 days of its publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 USC 315; 49 CFR 1.48

Issued on: February 25, 2002.

Jerry Combs,

Transportation Specialist.

[FR Doc. 02–5005 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Madison, Stanton, Wayne, Dixon, and Dakota Counties, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Madison, Stanton, Wayne, Dixon and Dakota Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5765. Mr. Arthur Yonkey, Planning and Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, will prepare an Environmental Impact Statement (EIS) for a proposal to improve Highway N–35 in northeast Nebraska in Madison, Stanton, Wayne, Dixon and Dakota Counties. The proposed improvements to N–35 will provide a four-lane highway between Norfolk and South Sioux City, Nebraska, for a distance of about 70 miles. Existing N–35 is a two-lane rural highway generally following the county road grid and is not conducive to longer distance through traffic.

Alternatives under consideration include: (1) Taking no action; (2) reconstruction of N–35 on existing alignment; and (3) providing a four-lane highway on new alignment.

An agency scoping meeting and a public scoping/information meeting are planned. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the public scoping/information meeting and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 26, 2002.

Edward Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 02–5086 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pottawattamie County, IA and Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed bridge project between Pottawattamie County, Iowa, and Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, Federal Highway Administration, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437–5765. Mr. Arthur Yonkey, Planning and Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479–4795. Mr. James Rost, Office of Environmental Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1798.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads, and the Iowa Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to construct a bridge over the Missouri River. The proposed project would connect Pottawattamie County, Iowa and Douglas County, Nebraska, in the vicinity of Omaha, Nebraska.

Alternatives under consideration include: (1) Taking no action; (2) rehabilitaiton or replacing the US–275 Bridge on the existing alignment; and (3) providing a new crossing adjacent to the existing alignment.

The South Omaha Veterans Memorial Bridge (Highway US–275 Bridge) has been listed on the National Register of Historic Places. The existing bridge is a multiple span structure approximately 4,380 feet long with a 22.2 foot driving surface. The main bridge section is a 2-span, continuous Warren through truss about 1,050 feet long.

An agency scoping meeting and a public scoping/information meeting are planned. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the public scoping/information meeting and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 26, 2002.

Edward Kosola,

Realty/Environmental Officer, Nebraska Divsion, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 02–5087 Filed 3–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10854; Notice 2]

Michelin North America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 1,400 11R24.5 Michelin XDY–EX LRH tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New Pneumatic Tires for Vehicles Other than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 29, 2001, in the **Federal Register** (FR66 54572). NHTSA received no comments.

FMVSS No. 199, S6.5, mandates that the tire identification and the DOT symbol labeling shall comply with 49 CFR part 574.

Michelin's noncompliance relates to the mislabeling of approximately 1,400 tires. The tires are 11R24.5 Michelin XDY–EX LRH truck tires. Michelin states that, ''During the period of the 29th week of 2001 through the 36th week of 2001, the Spartanburg, South Carolina plant of Michelin North America produced a number of tires with a portion of the DOT tire identification number marking (as required on one side of the tire by 49 CFR 571.119 S6.5b) which did not meet the labeling specifications as described by 49 CFR 574.5.''

Instead of a required marking that reads: ''DOT B6 4F BVR X NN01'', the tires were marked: ''DOT B6 4F NN01 X BVR'' where NN is the week of fabrication and 01 is the year. According to Michelin, all performance requirements of FMVSS No. 119 are met or exceeded. Up to 1,200 noncompliant tires have been delivered to end-users. The remaining noncompliant tires have been isolated in Michelin's warehouses and will be either brought into full compliance with the marking requirements of FMVSS No. 119 or scrapped.

Michelin supports its application for inconsequential noncompliance by stating that they do not believe the marking error will impact motor vehicle safety because the tires meet all Federal motor vehicle safety performance standards and the non-compliance is one of labeling.

Michelin has reviewed and strengthened its procedures for detecting this type of error. Instead of checking the first piece of a particular production run at the press, future samples will be taken to a separate inspection station where exact labeling specifications are displayed for comparison. Based on this improvement, the likelihood of future errors of this type is reduced.

The agency believes that in the case of a tire labeling noncompliance, the measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's ability to identify them, should the tires be recalled for performance related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or right-most position. Michelin's switching of the date code with the third position reserved for optional code information should not cause confusion since that optional information consists of letters, not numbers. Consequently, persons reading the tire identification label would easily be able to identify the four digit date code.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Michelin's application is hereby granted, and the application is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Dated: February 22, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–5092 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34168]

West Texas & Lubbock Railroad Company, Inc. and the Burlington and Northern and Santa Fe Railway Company—Joint Relocation Project Exemption—in Lubbock, TX

On February 20, 2002, West Texas & Lubbock Railroad Company, Inc. (WTLR) filed a notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint relocation project with The Burlington Northern and Santa Fe Railway Company (BNSF) in Lubbock, Lubbock County, TX.[1] The transaction was scheduled to be consummated after February 22, 2002. The earliest the transaction can be consummated is February 27, 2002, the effective date of the exemption (7 days after the verified notice of exemption was filed).

Under the joint relocation project, WTLR and BNSF propose the following transactions:

(1) WTLR will relocate to a new connecting track, which is to be built on behalf of WTLR by the City of Lubbock, located between WTLR milepost 7.2 and BNSF milepost 83.6, in Lubbock;

(2) BNSF will grant overhead trackage rights to WTLR over BNSF's line extending from BNSF milepost 83.6, at Broadview, TX, to BNSF milepost 88.6, at Canyon Jct., TX, a distance of approximately 5 miles;

(3) WTLR will abandon approximately 6.1 miles of its line between WTLR milepost 7.2 and WTLR milepost 1.1, in Lubbock.

WTLR states that the proposed joint relocation project will not disrupt service to shippers.[2] Additionally, WTLR states that the relocated line and trackage rights will not involve an expansion of service by WTLR into a new territory but will enable WTLR to preserve its current connection with BNSF in downtown Lubbock once WTLR abandons its line.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction

[1] The joint relocation project is part of a plan to accommodate the upgrade of U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. *See State of Texas (Acting by and Through the Texas Department of Transportation)—Acquisition Exemption—West Texas & Lubbock Railroad Company, Inc.,* STB Finance Docket No. 33889 (STB served July 5, 2000 and Mar. 6, 2001).

[2] There are no shippers located on the WTLR line being abandoned.

of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.-Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 34168, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: February 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–4926 Filed 3–1–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Department of Veterans Affairs (VA) National Research Advisory Council will meet at the Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 20171, March 4, 2002, from 8:30 a.m. until 4 p.m. The meeting will be open to the public.

The meeting will begin with opening remarks and an overview by Dr. George Rutherford, Council Chairman. The Council will receive briefings on Biomedical Research Program, Career Development Program, and Research, Education, and Clinical Centers. During the afternoon, the Council will receive briefings on Bioterrorism Issues in VA Research and Intellectual Property Issues. The meeting will conclude with a discussion of above agenda topics, administrative issues and future agenda topics.

Established by the Secretary, the purpose of the Council is to provide external advice and review for VA's research mission. Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Office of Research and Development at (202) 273–8284.

Dated: February 27, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–5158 Filed 3–1–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
March 4, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Lanai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designations of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 32 of the 37 species listed under the Endangered Species Act, known historically from the island of Lanai within 8 critical habitat units totaling approximately 7,853 hectares (ha) (19,405 acres (ac)) on the island of Lanai.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until May 3, 2002. Public hearing requests must be received by April 18, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The 32 species for which we propose critical habitat are *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* Critical habitat is not proposed for 4 (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum, and Zanthoxylum hawaiiense*) of the 37 species which no longer occur on the island of Lanai, and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai. Prudency determinations for these species were contained in previous proposals published in the **Federal Register** on November 7, 2000, December 18, 2000, December 27, 2000, December 29, 2000, and January 28, 2002. Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis,* for which we determined that critical habitat designation is not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known.

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 37 plant species that, at the time of listing, were reported from the island of Lanai (Table 1). Seven of these species are endemic to the island of Lanai, while 30 species are reported from one or more other islands, as well as Lanai. Each of these species is described in more detail below in the section, ''Discussion of Plant Taxa.''

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW. Isles, Kahoolawe Niihau
Abutilon eremitopetalum (NCN*)	.....	.....	.....	C	.....	.....	
Adenophorus periens (pendant kihi fern)	C	H	C	R	R	C	
Bidens micrantha ssp. *kalealaha* (kookoolau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano, sandbur, agrimony).		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia oblongifolia ssp. *mauiensis* (oha wai)				C	C		
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea lobata (haha)				H	C		
Cyanea macrostegia ssp. *gibsonii* (NCN)				C			
Cyperus trachysanthos (puukaa)	C	C	H	H			Ni (C)
Cyrtandra munroi (haiwale)				C	C		
Diellia erecta (NCN)	C	C	C	H	C	C	

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW. Isles, Kahoolawe Niihau
Diplazium molokaiense (asplenium-leaved asplenium).	H	H	H	H	C		
Gahnia lanaiensis (NCN)				C			
Hedyotis mannii (pilo)			C	C	C		
Hedyotis schlechtendahliana var. *remyi* (kopa)				C			
Hesperomannia arborescens (NCN)		C	C	H	C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H)
Labordia tinifolia var. *lanaiensis* (kamakahala)				C			
Mariscus fauriei (NCN)			C	H		C	
Melicope munroi (alani)			H	C			
Neraudia sericea (NCN)			C	H	C		Ka (H)
Phyllostegia glabra var. *lanaiensis* (NCN)				H			
Portulaca sclerocarpa (poe)				C		C	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), ka (C), NW Isles (C)
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium lepidotum ssp. *lepidotum* (NCN)		C		H			
Tetramolopium remyi (NCN)				C	H		
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Viola lanaiensis (NCN)				C			
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* NCN—No Common Name.

We determined that designation of critical habitat was prudent for six plants from the island of Lanai on December 27, 2000 (65 FR 82086). These species are: *Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis.* In proposals published on November 7, 2000 (65 FR 66808), and December 18, 2000 (65 FR 79192), we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai, Niihau, Maui, or Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999 (64 FR 48307), we determined that designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 66808, 65 FR 79192).

In the December 27, 2000, proposal we determined that critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Lanai, because it had not been seen in the wild on Lanai since 1914 and no viable genetic material of this species is known to exist. Therefore, such designation would not be beneficial to this species. No change is made here to the December 27, 2000, not prudent determination for *Phyllostegia glabra* var. *lanaiensis* and it is hereby incorporated by reference (65 FR 82086).

In the December 27, 2000, proposal we proposed designation of critical habitat for 18 plants from the island of Lanai. These species are: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi,* and *Viola lanaiensis.* In this proposal we have revised the proposed designations for these 18 plants based on new information and to address comments received during the comment periods on the December 27, 2000, proposal.

In the December 27, 2000, proposal we did not propose designation of critical habitat for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus faurei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (Kauai), December 18, 2000 (Maui and Kahoolawe), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these 16 species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, and 67 FR 3940). In this proposal, we propose designation of critical habitat

for *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Sesbania tomentosa,* and *Solanum incompletum* on the island of Lanai, based on new information, including information received during the comment periods on the December 27, 2000, proposal. Critical habitat is not proposed for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* on the island of Lanai because these plants no longer occur on Lanai and we are unable to determine habitat which is essential to their conservation on this island. However, proposed critical habitat designations for these species may be included in other future Hawaiian plants proposed critical habitat rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DECISIONS WILL BE MADE FOR FOUR SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT WHICH IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLAND OF LANAI

Species	Proposed rules in which critical habitat designations will be made
Mariscus fauriei	Molokai, Hawaii.
Silene lanceolata	Molokai, Hawaii, and Oahu.
Tetramolopium lepidotum ssp. lepidotum	Oahu.
Zanthoxylum hawaiiense	Kauai, Maui, Molokai, and Hawaii.

In this proposal, we determine that critical habitat is prudent for one species (*Tetramolopium lepidotum* ssp. *lepidotum*) for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). This plant was listed as endangered under the Endangered Species Act of 1973, as amended (Act) in 1991. At the time this plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to this species and would not benefit the plant. We determine that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum* because we now believe that such designation would be beneficial to this species. Critical habitat is not proposed at this time for *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai because the species no longer occurs on Lanai and we are unable to determine habitat which is essential to its conservation on this island. However, proposed critical habitat designation, or non-designation, for this species will be included in other future Hawaiian plants proposed critical habitat rules (Table 2).

Critical habitat for 32 of the 37 species from the island of Lanai is proposed at this time. These species are: *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* Critical habitat is not proposed for four of the 37 species (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense*) which no longer occur on the island of Lanai, and for which we are unable to determine any habitat that is essential to their conservation on the island of Lanai. However, proposed critical habitat designations for these species may be included in other future Hawaiian plants proposed critical habitat rules (Table 2). Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis* for which we determined, on December 27, 2000, that critical habitat designation is not prudent because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist. No change is made to this prudency determination here, and it is hereby incorporated by reference (65 FR 82086).

The Island of Lanai

Lanai is a small island totaling about 360 square kilometers (sq km) (139 square miles (sq mi)) in area. Hidden from the trade winds in the lee or rain shadow of the more massive West Maui Mountains, Lanai was formed from a single shield volcano built by eruptions at its summit and along three rift zones. The principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 1,027 meters (m) (3,370 feet (ft)). The entire ridge is commonly called Lanaihale, after its highest point. Annual rainfall on the summit of Lanaihale is 760 to 1,015 millimeters (mm) (30 to 40 inches (in)), but is considerably less, 250 to 500 mm (10 to 20 in), over much of the rest of the island (Department of Geography 1998).

Geologically, Lanai is part of the four island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui (Greater Maui). During the last Ice Age about 12,000 years ago when sea levels were about 160 m (525 ft) less than their present level, these four islands were connected by a broad lowland plain. This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota (Department of Geography 1998).

Changes in Lanai's ecosystem began with the arrival of the first Polynesians about 1,500 years ago. In the 1800s, goats (*Capra hircus*) and sheep (*Ovis aries*) were first introduced to the island. Native vegetation was soon decimated by these non-native ungulates, and erosion from wind and rain caused further damage to the native forests. Formal ranching was begun in 1902, and by 1910, the Territory forester helped to revegetate the island. By 1911, a ranch manager from New Zealand, George Munro, instituted a forest management practice to recover the native forests and bird species which included fencing and eradication of sheep and goats from the mountains. By the 1920s, Castle and Cooke had acquired more than 98 percent of the island and established a 6,500 ha (16,000 ac) pineapple plantation

surrounding its company town, Lanai City. In the early 1990s, the pineapple plantation closed, and luxury hotels were developed by the private landowner, sustaining the island's economy today (Hobdy 1993).

There are no military installations on the island of Lanai.

Discussion of Plant Taxa

Species Endemic to Lanai

Abutilon eremitopetalum (NCN)

Abutilon eremitopetalum is a long-lived shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, and heart-shaped leaves. It is the only *Abutilon* on Lanai whose flowers have green petals hidden within the calyx (the outside leaf-like part of the flower) (Bates 1999).

Abutilon eremitopetalum is known to flower during February. Little else is known about the life history of *Abutilon eremitopetalum.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies in the ahupuaa (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai. Currently, about seven individuals are known from a single population on privately owned land in Kahea Gulch on the northeastern part of the island (Caum 1933; Hawaii Natural Heritage Program (HINHP) Database 2000; Service 1995; Geographic Decision Systems International (GDSI) 2000).

Abutilon eremitopetalum is found in lowland dry forest at elevations between 108 and 660 m (354 and 2,165 ft), on a moderately steep north-facing slope on red sandy soil and rock. *Erythrina sandwicensis* (wili wili) and *Diospyros sandwichensis* (lama) are the dominant trees in open forest of the area. Other associated native species include *Psydrax odoratum* (alahee), *Dodonaea viscosa* (aalii), *Nesoluma polynesicum* (keahi), *Rauvolfia sandwicensis* (hao), *Sida fallax* (ilima), and *Wikstroemia* sp. (akia) (Service 1995; HINHP Database 2000).

The threats to *Abutilon eremitopetalum* are habitat degradation and competition by encroaching alien plant species such as *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush); browsing by axis deer (*Axis axis*); soil erosion caused by feral ungulate grazing on grasses and forbs; and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population. Fire is another potential threat because the area is dry much of the year (HINHP Database 2000; 56 FR 47686; Service 1995).

Cyanea macrostegia ssp. gibsonii (NCN)

Cyanea macrostegia ssp. *gibsonii,* a long-lived perennial and a member of the bellflower family (Campanulaceae), is a palm-like tree 1 to 7 m (3 to 23 ft) tall with elliptic or oblong leaves that have fine hairs covering the lower surface. The following combination of characters separates this taxon from the other members of the genus on Lanai: calyx lobes are oblong, narrowly oblong, or ovate in shape; and the calyx and corolla (petals of a flower) are both more than 0.5 centimeters (cm) (0.2 in) wide (Lammers 1999; 56 FR 47686).

Limited observations suggest *Cyanea macrostegia* ssp. *gibsonii* flowers during the month of July. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyanea macrostegia ssp. *gibsonii* has been is documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai. There are currently only two populations containing 74 individuals. One population is located north of Lanaihale and the second population is north of Puu aalii on privately owned land (Lammers 1999; 56 FR 47686; GDSI 2000; HINHP Database 2000).

The habitat of *Cyanea macrostegia* ssp. *gibsonii* is lowland wet *Metrosideros polymorpha* (ohia) forest or *Diplopterygium pinnatum* (uluhe lau nui)-*Metrosideros polymorpha* shrubland between elevations of 738 and 1,032 m (2,421 and 3,385 ft). It has been observed to grow on flat to moderate or steep slopes, usually on lower gulch slopes or gulch bottoms, often at edges of streambanks, probably due to vulnerability to ungulate damage at more accessible locations. Associated vegetation includes *Dicranopteris linearis* (uluhe), *Perrottetia sandwicensis* (olomea), *Scaevola chamissoniana* (naupaka kuahiwi), *Pipturus albidus* (mamaki), *Antidesma platyphyllum* (hame), *Cheirodendron trigynum* (olapa), *Freycinetia arborea* (ieie), *Psychotria* sp. (kopiko), *Cyrtandra* sp. (haiwale), *Broussaisia arguta* (kanawao), *Clermontia* sp. (oha wai), *Dubautia* sp. (naenae), *Hedyotis* sp. (NCN), *Ilex anomala* (kawau), *Labordia* sp. (kamakahala), *Melicope* sp. (alani), *Pneumatopteris sandwicensis* (NCN), and *Sadleria* sp. (amau) (Service 1995; HINHP Database 2000; Joel Lau, Hawaii Natural Heritage Program, pers. comm., 2001).

The threats to *Cyanea macrostegia* ssp. *gibsonii* are browsing by deer; competition with the alien plant *Hedychium gardnerianum* (kahili ginger); and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the existing populations (HINHP Database 2000; Service 1995; 56 FR 47686).

Gahnia lanaiensis (NCN)

Gahnia lanaiensis, a short-lived perennial and a member of the sedge family (Cyperaceae), is a tall (1.5 to 3 m (5 to 10 ft)), tufted, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 0.36 to 0.46 cm (0.14 to 0.18 in) long and purplish-black when mature (Koyama 1999).

July has been described as the ''end of the flowering season'' for *Gahnia lanaiensis.* Plants of this species have been observed with fruit in October. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Degener *et al.,* 1964; 56 FR 47686).

Gahnia lanaiensis is known from one population containing 47 individuals on privately owned land along the summit of Lanaihale in the Haalelepaakai area and on the eastern edge of Hauola Gulch. The population is found between 915 and 1,030 m (3,000 and 3,380 ft) in elevation. This distribution encompasses the entire known historic range of the species (GDSI 2000; HINHP Database 2000).

The habitat of *Gahnia lanaiensis* is lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland at elevations between 737 and 1,032 m (2,417 and 3,385 ft). It occurs on flat to gentle ridgecrest topography in moist to wet clay or other soil substrate in open areas or in moderate shade. Associated species include native mat ferns, *Doodia* sp.

(okupukupu laulii), *Odontosoria chinensis* (palaa), *Ilex anomala* (kawau), *Hedyotis terminalis* (manono), *Sadleria* spp. (amau), *Coprosma* sp. (pilo), *Lycopodium* sp. (wawaeiole), *Scaevola* sp. (naupaka), and *Styphelia tameiameiae* (pukiawe) (Service 1995).

The primary threats to this species are the small number of plants and their restricted distribution, which increase the potential for extinction from naturally occurring events. In addition, *Gahnia lanaiensis* is threatened by habitat destruction resulting from the planned development of the island, and competition with *Leptospermum scoparium* (manuka), a weedy tree introduced from New Zealand, which is spreading along Lanaihale, but has not yet reached the area where *Gahnia* is found (Service 1995; HINHP Database 2000).

Hedyotis schlechtendahliana var. remyi (kopa)

Hedyotis schlechtendahliana var. *remyi,* a short-lived perennial and a member of the coffee family (Rubiaceae), is a few-branched subshrub from 60 to 600 cm (24 to 240 in) long, with weakly erect or climbing stems that may be somewhat square, smooth, and glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The species is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems, and the variety *remyi* is distinguished from *Hedyotis schlechtendahliana* var. *schlechtendahliana* by the leaf shape, presence of narrow flowering stalks, and flower color (Wagner *et al.,* 1999).

Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown for *Hedyotis schlechtendahliana* var. *remyi* (Service 2001).

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale. Currently, this species is known from eight individuals in two populations on privately owned land on Kaiholeha-Hulupoe Ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (64 FR 48307; GDSI 2000; HINHP Database 2000).

Hedyotis schlechtendahliana var. *remyi* typically grows on or near ridge crests in mesic windswept shrubland with a mixture of dominant plant species that may include *Metrosideros polymorpha, Dicranopteris linearis,* or *Styphelia tameiameiae* at elevations between 558 and 1,032 m (1,830 and 3,385 ft). Associated plant species include *Dodonaea viscosa, Odontosoria chinensis, Sadleria* spp., *Dubautia* spp., and *Myrsine* sp. (kolea) (HINHP Database 2000; 64 FR 48307).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and destruction by axis deer; competition with alien plant species, such as *Psidium cattleianum* (strawberry guava), *Myrica faya* (firetree), *Leptospermum scoparium,* and *Schinus terebinthifolius* (christmasberry); and random environmental events or reduced reproductive vigor due to the small number of remaining individuals and populations (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. lanaiensis (kamakahala)

Labordia tinifolia var. *lanaiensis,* a short-lived perennial in the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. This subspecies differs from the other species in this endemic Hawaiian genus by having larger capsules (a dry, generally many seeded fruit) and smaller corollas (petals, whorl of flower parts) (Wagner *et al.,* 1999).

Little is known about the life history of *Labordia tinifolia* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale. Currently, *Labordia tinifolia* var. *lanaiensis* is known from only one population on privately owned land at the southeastern end of the summit ridge of Lanaihale. This population totals 300 to 800 scattered individuals (HINHP Database 2000; GDSI 2000; Service 2001).

The typical habitat of *Labordia tinifolia* var. *lanaiensis* is gulch slopes in lowland mesic forest. Associated native species include *Diospyros sandwicensis, Bobea elatior* (ahakea launui), *Myrsine lessertiana* (kolea), *Pipturus albidus, Pittosporum confertiflorum* (hoawa), *Pleomele fernaldii* (hala pepe), *Sadleria cyatheoides, Scaevola chamissoniana, Xylosma hawaiiense* (maua), *Cyrtandra grayii* (haiwale) and *Cyrtandra grayana* (haiwale), *Diplopterygium pinnatum, Hedyotis acuminata* (au), *Clermontia* spp., *Alyxia oliviformis* (maile), *Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Melicope* spp., *Perrottetia sandwicensis, Pouteria sandwicensis* (alaa), and *Psychotria* spp., *Dicranopteris linearis,* and *Scaevola chamissoniana,* at elevations between 558 and 1,013 m (1,830 and 3,323 ft) (HINHP Database 2000; 64 FR 48307; Service 2001).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several alien plant species. The species is also threatened by random environmental factors because of the small population (64 FR 48307; Service 2001).

Phyllostegia glabra var. lanaiensis (NCN)

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent (reclining, with the end ascending), glabrous, short-lived perennial herb in the mint family (Lamiaceae). Its leaves are thin, narrow, lance-shaped, 8 to 24 cm (3.2 to 9.5 in) long and 1.6 to 2.5 cm (0.63 to 0.98 in) wide, often red-tinged or with red veins, and toothed at the edges. The flowers are in clusters of six to ten per leaf axil, mostly at the ends of branches. The flowers are white, occasionally tinged with purple, and are variable in size, about 1 to 2.5 cm (0.39 to 0.98 in) long. The fruit consists of four small, fleshy nutlets. This variety is very similar to *Phyllostegia glabra* var. *glabra;* it may be difficult to differentiate between the two species without flowers (Wagner *et al.,* 1999).

Little is known about the life history of *Phyllostegia glabra* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Phyllostegia glabra var. *lanaiensis* is known from only two collections from Lanai (one near Kaiholena) and was last collected in 1914 (two fertile specimens). A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (Robert Hobdy, DOFAW, pers. comm., 1992; Service 1995).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Nothing is known of the threats to *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Viola lanaiensis (NCN)

Viola lanaiensis, a short-lived perennial of the violet family (Violaceae), is a small, erect, unbranched or little-branched subshrub. The leaves, which are clustered toward the upper part of the stem, are lance-shaped with a pair of narrow,

membranous stipules (leaf-like appendages arising from the base of a leaf) below each leaf axis. The flowers are small and white with purple tinged or purple veins, and occur singly or up to four per upper leaf axil. The fruit is a capsule, about 1.0 to 1.3 cm (0.4 to 0.5 in) long. It is the only member of the genus on Lanai (Wagner *et al.,* 1999).

Little is known about the life history of *Viola lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Viola lanaiensis was known historically from scattered sites on the summit, ridges, and upper slopes of Lanaihale (from near the head of Kaiolena and Hookio Gulches to the vicinity of Haalelepaakai, a distance of about 4 km (2.5 mi), at elevations of approximately 850 to 975 m (2,790 to 3,200 ft). An occurrence of *V. lanaiensis* was known in the late 1970s along the summit road near the head of Waialala Gulch where a population of approximately 20 individuals flourished. That population has since disappeared due to habitat disturbance. Two populations are currently known from privately owned land on southern Lanai: in Kunoa Gulch; between Kunoa and Waialala Gulches; in the upper end of the northernmost drainage of Awehi Gulch; in Hauola Gulch; and along Hauola Trail. It is estimated that the populations total less than 500 plants (GDSI 2000; HINHP Database 2000).

The habitat of *Viola lanaiensis* is *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland. It has been observed on moderate to steep slopes from lower gulches to ridgetops, at elevations between 639 and 1,032 m (2,096 and 3,385 ft), with a soil and decomposed rock substrate in open to shaded areas. It was once observed growing from crevices in drier soil on a mostly open rock area near a recent landslide. Associated vegetation includes ferns and short windswept shrubs or other diverse mesic community members, such as *Scaevola chamissoniana, Hedyotis terminalis, Hedyotis centranthoides* (NCN), *Styphelia tameiameiae, Carex* sp. (NCN), *Ilex anomala, Psychotria* spp., *Antidesma* spp. (hame), *Coprosma* spp., *Freycinetia arborea, Myrsine* spp., *Nestegis* sp. (olopua), *Psychotria* spp., and Xylosma sp. (maua) (Service 1995; 56 FR 47686).

The main threats to *Viola lanaiensis* include browsing and habitat disturbance by axis deer; encroaching alien plant species, such as *Leptospermum* sp. (NCN); depressed reproductive vigor due to a limited local gene pool; the probable loss of appropriate pollinators; and predation by slugs (Midax gigetes) (Service 1995; 56 FR 47686).

Multi-Island Species

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground), and short-lived perennial fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet) margins, pinnae at right angles to the midrib axis, placement of the sori on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores may be dispersed by wind, water, or perhaps on the feet of birds or insects. Spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989; Service 1999).

Historically, *Adenophorus periens* was known from Kauai, Oahu, and the island of Hawaii, with undocumented reports from Lanai and Maui. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Lanai, it was last seen in the 1860s (59 FR 56333; GDSI 2000; HINHP Database 2000; Service 1999).

This species, an epiphyte (a plant that derives moisture and nutrients from the air and rain) usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 763 and 1,032 m (2,503 and 3,385 ft). Associated native plant species include *Machaerina angustifolia* (uki), *Cheirodendron trigynum, Sadleria* spp., *Clermontia* spp., *Psychotria* spp., *Melicope* spp., *Freycinetia arborea, Broussaisia arguta, Syzygium sandwicensis* (ohia ha), and *Hedyotis terminalis* (59 FR 56333; Linney 1989; Kennith Wood, National Tropical Botanical Garden, pers. comm., 2001; Service 1999).

Nothing is known of the threats to *Adenophorus periens* on the island of Lanai because the species was last seen there in the 1860s.

Bidens micrantha ssp. kalealaha (kookoolau)

Bidens micrantha ssp. *kalealaha,* a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens,* such as *B. mauiensis* and *B. menziesii,* and possibly *B. conjuncta.* Little else is known about the life history of *Bidens micrantha* ssp. *kalealaha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai and Maui. Currently, this taxon remains only on East Maui. It was last seen on Lanai in the 1960s (Ganders and Nagata 1999; HINHP Database 2000; Service 1997; 57 FR 20772; GDSI 2000; HINHP Database 2000).

The habitat of *Bidens micrantha* ssp. *kalealaha* is gulch slopes in dry *Dodonaea viscosa* shrubland at elevations between 409 and 771 m (1,342 and 2,529 ft) (J. Lau, pers. comm., 2001).

The threats to this species on Lanai included habitat destruction by feral goats, pigs, and deer; competition from a variety of alien plant species; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial and a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles (narrowed top of ovary), longer stems and petioles (a stalk that supports a leaf), and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Its flowering

cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and Hawaii. Currently, this species is known from Kauai, Oahu, Maui, Hawaii, and Lanai. On Lanai, the three populations, containing a total of 14 individual plants, are found on privately owned land in the Ahakea and Kanepuu Units of Kanepuu Preserve, and on Puhielelu Ridge (GDSI 2000; HINHP Database 2000).

Bonamia menziesii is found in dry *Nestegis sandwicensis-Diospyros* sp. (lama) forest and dry *Dodonea viscosa* shrubland at elevations between 315 and 885 m (1,033 and 2,903 ft). Associated species include *Bobea* sp. (ahakea), *Nesoluma polynesicum, Erythrina sandwicensis, Rauvolfia sandwicensis, Metrosideros polymorpha, Psydrax odoratum, Dienella sandwicensis* (uki uki), *Diospyros sandwicensis* (lama), *Hedyotis terminalis, Melicope* sp., *Myoporum sandwicense* (naio), *Nestegis sandwicensis* (olopua), *Pisonia* sp. (papala kepau), *Pittosporum* sp. (hoawa), *Pouteria sandwicensis,* and *Sapindus oahuensis* (lonomea) (HINHP Database 2000; 59 FR 56333).

The primary threats to this species on Lanai are habitat degradation and possible predation by feral pigs, goats, and axis deer; competition with a variety of alien plant species, such as *Lantana camara, Leucaena leucocephala* and *Schinus terebinthifolius;* and an alien beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: the reproductive system is protandrous, meaning there is a temporal separation between the production of male and female gametes, in this case a separation of several days; only 5 percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months. This species was observed in flower during August. Little else is known about the life history of *Brighamia rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Maui, and it was last seen on Lanai in 1911 (Lammers 1999; HINHP Database 2000; K. Wood, *in litt.* 2000; Service 1996b; 57 FR 46325). Currently, it is extant only on Molokai.

On Lanai, *Brighamia rockii* occurred on sparsely vegetated ledges of steep, rocky, dry cliffs, at elevations between 119 and 756 m (390 and 2,480 ft) with native grasses, sedges, herbs and shrubs (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Threats to *Brighamia rockii* on the island of Lanai included habitat destruction from deer and goats, and competition with alien plants (Service 1996b).

Cenchrus agrimonioides (kamanomano (= sandbur, agrimony))

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Lanai it was last seen in 1915 (Service 1999; 61 FR 53108; HINHP Database 2000).

Cenchrus agrimonioides var. *agrimonioides* was found on slopes in mesic *Metrosideros polymorpha* forest and shrubland at elevations between 583 and 878 m (1,912 and 2,880 ft) (Service 1999; 61 FR 53108; HINHP Database 2000; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Lanai included competition with alien plant species, and browsing and habitat degradation by goats and cattle (*Bos taurus*) (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.*, 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Centaurium sebaeoides was historically and is currently known from Kauai, Oahu, Molokai, Lanai, and Maui. On Lanai, there is one population containing between 20 and 30 individual plants in Maunalei Valley on privately owned land (HINHP Database 2000).

This species is found on dry ledges at elevations between 39 and 331 m (128 and 1,086 ft). Associated species include *Hibiscus brackenridgei* (HINHP Database 2000).

The major threats to this species on Lanai are competition from alien plant species, depressed reproductive vigor, and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (Service 1999; HINHP Database 2000).

Clermontia oblongifolia ssp. mauiensis (oha wai)

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while *Clermontia oblongifolia* ssp. *oblongifolia* is only known from Oahu, and *Clermontia oblongifolia* ssp. *brevipes* is only known from Molokai (Lammers 1988, 1999; 57 FR 20772).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *Clermontia oblongifolia* ssp. *mauiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; Rock 1919).

Clermontia oblongifolia ssp. *mauiensis* was historically and is currently known from Lanai and Maui. On Lanai, an unknown number of individuals are reported from Kaiholena Gulch on privately owned land (Lammers 1999; 57 FR 20772; HINHP Database 2000).

This plant typically grows in gulch bottoms in mesic forests at elevations between 700 and 1,032 m (2,296 and 3,385 ft) (HINHP Database 2000).

The threats to this species on Lanai are its vulnerability to extinction from a single natural or human-caused environmental disturbance; depressed reproductive vigor; and habitat degradation by feral pigs (57 FR 20772; Service 1997).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial and a member of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem), creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Maui, Lanai, and the island of Hawaii. Currently, it is found on Oahu, Lanai, Maui, and Molokai. On Lanai, there are two populations totaling 42 individual plants on privately owned land in the Waiapaa-Kapohaku area on the leeward side of the island, and in the Lopa and Waiopa Gulches on the windward side (59 FR 49025; GDSI 2000; HINHP Database 2000).

This species is found in the forest understory at elevations between 640 and 944 m (2,099 and 3,096 ft) in diverse mesic forest and scrubby mixed mesic forest (HINHP Database 2000). Associated native plant species include *Nestegis sandwicensis, Coprosma* spp., *Sadleria* spp., *Selaginella* sp. (lepelepe a moa), *Carex meyenii* (NCN), *Blechnum occidentale* (NCN), *Pipturus* spp., *Melicope* spp., *Pneumatopteris sandwicensis, Pittosporum* spp., *Alyxia oliviformis, Freycinetia arborea, Antidesma* spp., *Cyrtandra* spp., *Peperomia* sp. (ala ala wai nui), *Myrsine* spp., *Psychotria* spp., *Metrosideros polymorpha, Syzygium sandwicensis, Wikstroemia* spp., *Microlepia* sp. (NCN), *Doodia* spp., *Boehmeria grandis* (akolea), *Nephrolepis* sp. (kupukupu), *Perrotettia sandwicensis*, and *Xylosma* sp. (HINHP Database 2000, 59 FR 49025).

The primary threats to this species on Lanai are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant species, especially Psidium cattleianum and *Schinus terebinthifolius;* fire; decreased reproductive vigor; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a; Culliney 1988; HINHP Database 2000; 59 FR 49025).

Cyanea grimesiana ssp. grimesiana (haha)

Cyanea grimesiana ssp. *grimesiana*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Cyanea grimesiana ssp. *grimesiana* was historically and is currently known from Oahu, Molokai, Lanai, and Maui. Currently, on Lanai there are two populations with at least three individuals on privately owned land in Kaiholena Gulch and Waiakeakua Gulch (61 FR 53108; Service 1999; HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on rocky or steep slopes of stream banks, at elevations between 667 and 1,032 m (2,188 and 3,385 ft). Associated plants include *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., and *Xylosma* sp. (61 FR 53108; Service 1999).

The threats to this species on Lanai are habitat degradation and/or destruction caused by feral axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events causing extinction due to the small number of existing individuals; fire; landslides; and predation by rats (Rattus rattus) and various slugs (59 FR 53108; Service 1999).

Cyanea lobata (haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Degener 1936; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It was last seen on Lanai in 1934 (GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772).

This species occurs in gulches in mesic to wet forest and shrubland at elevations between 664 and 1,032 m (2,178 and 3,385 ft) and containing one or more of the following associated native plant species: *Freycinetia arborea, Touchardia latifolia* (olona), *Morinda trimera* (noni kuahiwi), *Metrosideros polymorpha, Clermontia kakeana* (oha wai), *Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus, Peperomia* spp., *Pleomele* spp. (halapepe), and *Athyrium* spp. (akolea) (J. Lau, pers. comm., 2001; Service 1997; 57 FR 20772; HINHP Database 2000; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Lanai included habitat degradation by feral pigs (Service 1997; 57 FR 20772).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau and Kauai, and from scattered locations on Oahu, Molokai, and Lanai. Currently it is found on Kauai, Niihau and Oahu. It was last observed on Lanai in 1919 (HINHP Database 2000; GDSI 2000).

Cyperus trachysanthos is usually found in seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* (pili) grassland at elevations between 0 and 46 m (0 and 151 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (J. Lau, pers. comm., 2001; 61 FR 53108; Koyama 1999; K. Wood, pers. comm., 2001).

On Lanai, the threats to this species included the loss of wetlands (61 FR 53108; Service 1999).

Cyrtandra munroi (haiwale)

Cyrtandra munroi is a short-lived perennial and a member of the African violet family (Gesneriaceae). It is a shrub with opposite, elliptic to almost circular leaves that are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et* al., 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra*, but not on *Cyrtandra munroi* specifically. These studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds, which eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyrtandra munroi was historically and is currently known from Lanai and Maui. Currently, on Lanai there are a total of two populations containing 17 individuals on privately owned land in the Kapohaku/Waiapaa area, and in the gulch between Kunoa and Waialala gulches (GDSI 2000; HINHP Database 2000).

The habitat of this species is diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *Metrosideros polymorpha* forest, typically on rich, moderately steep gulch slopes at elevations between 667 and 1,016 m (2,188 and 3,332 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include, *Diospyros sandwicensis, Bobea elatior, Myrsine lessertiana, Pipturus albidus, Pittosporum confertiflorum, Pleomele fernaldii, Sadleria cyatheoides, Scaevola chamissoniana, Xylosma hawaiiense, Cyrtandra grayii, Cyrtandra grayana Diplopterygium pinnatum, Hedyotis acuminata* (au), *Clermontia* spp., *Alyxia oliviformis, Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Melicope* spp., *Perrottetia sandwicensis, Pouteria sandwicensis*, and *Psychotria* spp. (HINHP Database 2000; Service 1995).

The threats to this species on Lanai are browsing and habitat disturbance by axis deer; competition with the alien plant species *Psidium cattleianum, Myrica faya, Leptospermum scoparium, Pluchea symphytifolia* (sourbush), *Melinis minutiflora* (molasses grass), *Rubus rosifolius* (thimbleberry), and *Paspalum conjugatum* (Hilo grass); depressed reproductive vigor; and loss of appropriate pollinators (Service 1995; 57 FR 20772).

Diellia erecta (NCN)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Molokai, Maui, Oahu, and the island of Hawaii and was recently rediscovered on Kauai. On Lanai it was last seen in 1929 (Service 1999; HINHP Database 2000).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Pisonia* spp. forest at elevations between 651 and 955 m (2,135 and 3,132 ft). Associated native plant species include native grasses and ferns (J. Lau, pers. comm., 2001; Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Diellia erecta* on Lanai included habitat degradation by pigs and goats, and competition with alien plant species (59 FR 56333; Service 1999).

Diplazium molokaiense (asplenium-leaved asplenium)

Diplazium molokaiense, a short-lived perennial member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is known only from Maui. It was last seen on Lanai in 1914 (HINHP Database 2000).

This species occurs in shady, damp places in wet forests at elevations between 737 and 1,032 m (2,417 and 3,385 ft) (J. Lau, pers. comm., 2001; Service 1998a; HINHP Database 2000).

The primary threats to *Diplazium molokaiense* on Lanai included habitat degradation by feral goats and pigs and competition with alien plant species (59 FR 49025; Service 1998a; HINHP Database 2000).

Hedyotis mannii (pilo)

Hedyotis mannii is a short-lived perennial and a member of the coffee family (Rubiaceae). It has smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.*, 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai. After a hiatus of 50 years, this species was rediscovered in 1987 by Steve Perlman on Molokai. In addition, a population was discovered on Maui and two populations, now numbering between 35 and 40 individual plants, were discovered on Lanai in 1991 on privately owned land in Maunalei and Hauola gulches (GDSI 2000; HINHP Database 2000; Service 1996b).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls and on steep stream banks in wet forests between 711 and 1,032 m (2,332 and 3,385 ft) in elevation. Associated plant species include *Thelypteris sandwicensis, Sadleria* spp., *Cyrtandra grayii, Scaevola chamissoniana, Freycinetia arborea*, and *Carex meyenii* (J. Lau, pers. comm., 2001; HINHP Database 2000; Service 1996b).

The limited number of individuals of *Hedyotis mannii* makes it extremely vulnerable to extinction from random environmental events. Feral pigs and alien plants, such as *Melinis minutiflora, Psidium cattleianum*, and *Rubus rosifolius*, degrade the habitat of this species and contribute to its vulnerability (57 FR 46325).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.*, 1999).

This species has been observed in flower from April through June and fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. It was last seen on Lanai in 1940 (GDSI 2000; HINHP Database 2000; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 737 and 1,032 m (2,417 and 3,385 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp. (hapuu), *Dicranopteris linearis, Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp. (uki), *Cheirodendron* spp. (olapa), or *Freycinetia arborea* (HINHP Database 2000; Service 1998b; 59 FR 14482; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Lanai included habitat degradation by feral pigs and goats, and competition with alien plant species (Service 1998b; 59 FR 14482; HINHP Database 2000).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar.

Two subspecies are currently recognized, *H. brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii. On Lanai, there are two populations containing an unknown number of individuals on privately owned land; one population is known from Keamuku Road, one from a fenced area on the dry plains of Kaena Point. Outplanted individuals that were initially planted in Kanepuu Preserve now appear to be reproducing naturally (Service 1999; GDSI 2000; HINHP Database 2000; Wesley Wong, Jr., formerly of Hawaii Division of Forestry and Wildlife, *in litt.* 1998).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry to mesic forest and shrubland between 0 and 645 m (0 and 2,116 ft) in elevation. Associated plant species include *Dodonea viscosa, Psydrax odoratum, Eurya sandwicensis* (anini), *Isachne distichophylla*, and *Sida fallax* (HINHP Database 2000; Service 1999).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Lanai are habitat degradation; possible predation by pigs, goats, axis deer, and rats (*Rattus rattus*); competition with alien plant species; fire; and susceptibility to extinction caused by naturally occurring events or reduced reproductive vigor (59 FR 56333; Service 1999).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole (stalk) is subtended

by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The flower stalk is white-hairy, and subtended by two bracts. Bracts arise at the tip of the main flower stalk. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.*, 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium was historically found on six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently it is found only on the island of Hawaii. It was last seen on Lanai in 1870 (Service 1996a; 59 FR 10305; GDSI 2000; HINHP Database 2000).

On Lanai, *Isodendrion pyrifolium* occured in dry shrubland at elevations between 132 and 574 m (433 and 1,883 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Lipochaeta* spp. (nehe), *Heteropogon contortus*, and *Wikstroemia oahuensis* (akia) (J. Lau, pers. comm., 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Lanai because the species was last seen there in 1870.

Mariscus fauriei (NCN)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. It has leaves shorter than or the same length as the stems and 1 to 3.5 mm (0.04 to 0.1 in) wide. This species differs from others in the genus in Hawaii by its smaller size and its more narrow, flattened, and more spreading spikelets (Koyama 1990; 59 FR 10305).

Little is known about the life history of *Mariscus fauriei*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1996a).

Historically, *Mariscus fauriei* was found on Molokai, Lanai, and the island of Hawaii. It currently occurs on Molokai and the island of Hawaii. It was last seen on Lanai in 1929 (59 FR 10305; HINHP Database 2000; GDSI 2000; Service 1996a).

Nothing is known of the preferred habitat of or native plant species associated with *Mariscus fauriei* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Mariscus fauriei* on the island of Lanai (Service 1996a).

Melicope munroi (alani)

Melicope munroi, a long-lived perennial of the rue (citrus) family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species is minutely hairy. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (a flower cluster) stalk (Stone *et al.*, 1999).

Little is known about the life history of *Melicope munroi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is known only from the Lanaihale summit ridge on Lanai. There are two populations totaling an estimated 300 to 800 individuals on privately owned land on the Lanaihale summit, head of Hauola gulch, Waialala gulch, and the ridge of Waialala gulch (HINHP Database 2000; 64 FR 48307; GDSI 2000; Service 2001).

Melicope munroi is typically found on slopes in lowland wet shrublands, at elevations of 701 and 1,032 m (2,299 and 3,385 ft). Associated native plant species include *Diplopterygium pinnatum, Dicranopteris linearis, Metrosideros polymorpha, Cheirodendron trigynum, Coprosma* spp., *Broussaisia arguta*, other *Melicope* spp., and *Machaerina angustifolia* (HINHP Database 2000; Service 2001).

The major threats to *Melicope munroi* on Lanai are trampling, browsing, and habitat degradation by axis deer and competition with the alien plant species *Leptospermum scoparium* and *Psidium cattleianum*. Random environmental events also threaten the two remaining populations (HINHP Database 2000; 64 FR 48307; Service 2001).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *N. sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.*, 1999).

Little is known about the life history of *Neraudia sericea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was historically found on Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is extant on Molokai and Maui. It was last seen on Lanai in 1913 (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in gulch slopes or gulch bottoms in dry-mesic or mesic forest at elevations between 693 and 869 m (2,273 and 2,850 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Diospyros sandwicensis, Nestegis sandwicensis*, and *Dodonaea viscosa* (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Lanai included habitat degradation by feral pigs and goats, and competition with alien plant species (Service 1999; 59 FR 56333).

Portulaca sclerocarpa (poe)

Portulaca sclerocarpa of the purslane family (Portulacaceae) is a short-lived perennial herb with a fleshy tuberous taproot, which becomes woody and has stems up to about 20 cm (8 in) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-

section. Dense tufts of hairs are located in each leaf axil (point of divergence between a branch or leaf) and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals (one of the modified leaves comprising a flower calyx) have membranous edges and the petals are white, pink, or pink with a white base. The hardened capsules open very late or not at all, and contain glossy, dark reddish-brown seeds. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *P. villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.*, 1999).

This species was observed in flower during March 1977, December 1977, and June 1978. The presence of juveniles indicated that pollination and germination were occurring. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1996a).

Portulaca sclerocarpa was historically and is currently found on the island of Hawaii, and on an islet (Poopoo Islet) off the south coast of the island of Lanai. The population on privately owned land on Poopoo Islet contains about 10 plants (HINHP Database 2000; GDSI 2000; Service 1996a). Poopoo Islet is a small rocky outcrop, 1 ha (2.4 ac) in area and approximately 200 m (600 ft) from the south shoreline of Lanai, and is considered part of the island of Lanai.

This species grows on exposed ledges in thin soil in coastal communities at elevations between 0 and 82 m (0 and 269 ft) (Wagner *et al.,* 1999; HINHP Database 2000).

The major threats to *Portulaca sclerocarpa* on Lanai are herbivory (feeding on plants) by the larvae of an introduced sphinx moth (*Hyles lineata*); competition from alien plants; and fire (Frank Howarth, Bishop Museum, *in litt.* 2000; 59 FR 10305; Service 1996a).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets, which are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.*, 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus, *Hylaeus,* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on two islands in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands. It was last seen on Lanai in 1957 (59 FR 56333; HINHP Database 2000; GDSI 2000).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 44 and 221 m (144 and 725 ft). It commonly occurs in coastal dry shrublands or mixed coastal dry cliffs with the associated native plant species *Chamaesyce celastroides* (akoko), *Cuscuta sandwichiana* (kaunaoa), *Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense, Nama sandwicensis* (nama), *Scaevola sericea* (naupaka kahakai), *Sida fallax, Sporobolus virginicus* (akiaki), *Vitex rotundifolia* (kolokolo kahakai) or *Waltheria indica* (uhaloa) (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Lanai included habitat degradation caused by competition with various alien plant species; lack of adequate pollination; seed predation by rats, mice (*Mus musculus*) and, potentially, alien insects; and fire (59 FR 56333; Service 1999).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *Silene alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.*, 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 46325; Service 1996b).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. It was last observed on Lanai in 1930 (57 FR 46325; GDSI 2000; Service 1996b).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Lanai (Service 1996b).

Nothing is known of the threats to *Silene lanceolata* on the island of Lanai (Service 1996b).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333; Service 1999).

Historically, *Solanum incompletum* was known on Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. It was last seen on Lanai in 1925 (HINHP Database 2000; Service 1999).

On Lanai, *Solanum incompletum* occurred on broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland, at elevations between 151 and 372 m (495 and 1,220 ft) with one or more of the

following associated native plant species: *Heteropogon contortus, Lipochaeta* spp., and *Wikstroemia oahuensis* (Service 1999; J. Lau pers comm., 2001).

On Lanai, the threats to *Solanum incompletum* included habitat destruction by goats and competition with various alien plants (Service 1999).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Based on recent collections it is now known to be extant on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. On Lanai, this species is known from three populations of 570 to 620 individuals on privately owned land: in the southern edge of Kapoho Gulch, Kamiki Ridge, and approximately 274 m (900 ft) downslope of Puu Manu (59 FR 56333; HINHP Database 2000; R Hobdy, pers. comm., 2000; Service 1999).

Spermolepis hawaiiensis is known from gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis*, or shrublands dominated by *Dodonaea viscosa* at elevations between 402 and 711 m (1,319 and 2,332 ft). Associated native plant species include *Nestegis sandwicensis, Nesoluma polynesicum, Psydrax odorata,* and *Rauvolfia sandwicensis* (J. Lau, pers. comm., 2001; HINHP Database 2000; R. Hobdy, pers. comm., 2000; Service 1999).

The primary threats to *Spermolepis hawaiiensis* on Lanai are habitat degradation by feral goats, competition with various alien plants, such as *Lantana camara*; and erosion, landslides, and rockslides due to natural weathering, which result in the death of individual plants as well as habitat destruction (59 FR 56333; Service 1999; R. Hobdy, pers. comm., 2000; Service 1999).

Tetramolopium lepidotum ssp. lepidotum (NCN)

Tetramolopium lepidotum ssp. *lepidotum*, a member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. Leaves of this taxon are lance-shaped, wider at the leaf tip, and measure 1.0 to 1.8 in (25 to 45 mm) long and 0.04 to 0.3 in (1 to 7 mm) wide. Flower heads are arranged in groups of six to 12. The involucre is bell-shaped and less than 0.2 in (4 mm) high. Florets are either female or bisexual, with both occurring on the same plant. There are 21 to 40 white to pinkish-lavender ray florets 0.04 to 0.08 in (1 to 2 mm) long on the periphery of each head. In the center of each head there are four to eleven maroon to pale salmon disk florets. The fruits are achenes, 0.06 to 0.1 in (1.6 to 2.5 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This taxon can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of six to 12 heads (Lowrey 1999).

Tetramolopium lepidotum ssp. *lepidotum* is a short-lived perennial that has been observed producing fruit and flowers from April through July. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (56 FR 55770; Service 1998b).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from Oahu and Lanai. It currently occurs only on Oahu. It was last seen on Lanai in 1928 (56 FR 55770; Service 1998b HINHP Database 2000; GDSI 2000; EDA Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Nothing is known of the threats to *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. Its leaves are firm, very narrow, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are each comprised of 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than 1 flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation; the adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. The aridity of the area, possibly coupled with human-induced changes in the habitat and subsequent lack of availability of suitable sites for seedling establishment, may be a factor limiting population growth and expansion. Requirements of this taxon in these areas are not known, but success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be by butterflies, bees, or flies. Seed dispersal agents, environmental requirements, and other limiting factors are unknown (Lowrey 1986; Service 1995).

Historically, the species was known from Maui and Lanai. Currently, *Tetramolopium remyi* is known only from two populations on Lanai on privately owned land, one near Awalua Road and the other near Awehi Road, with a total of approximately 66 plants (GDSI 2000; HINHP Database 2000).

Tetramolopium remyi is found in red, sandy, loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities at elevations between 65 and 485 m (213 and 1,591 ft). Commonly associated native species include *Bidens mauiensis* (kookoolau), *Waltheria indica, Wikstroemia oahuensis,* and *Lipochaeta lavarum* (nehe) (HINHP Database 2000).

Browsing by deer and mouflon sheep (*Ovis musimon*) and competition from alien species, primarily *Andropogon viginicus* (broomsedge) and *Panicum maximum* (guinea grass), are the main threats to the species on Lanai. Fire is also a potential threat (Service 1995; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets, which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of 1 to 4, have thin, translucent, pale yellow or greenish-yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.,* 1999).

Little is known about the life history of *Vigna o-wahuensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Based on recent collections, *Vigna o-wahuensis* is now known to be extant on the islands of Molokai, Maui, Lanai, Kahoolawe, and Hawaii. On Lanai, one population with at least one individual is known from Kanepuu on privately owned land (GDSI 2000; HINHP Database 2000; J. Lau, *in litt.* 2000; Service 1999).

On Lanai, *Vigna o-wahuensis* is found in *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest at elevations between 98 and 622 m (321 and 2,040 ft) (HINHP Database 2000; J. Lau, pers. comm., 2001; 59 FR 56333).

Threats to *Vigna o-wahuensis* on Lanai include habitat degradation by pigs and axis deer; competition with various alien plant species; fire; and random naturally occurring events causing extinction and or reduced reproductive vigor of the only remaining individual on Lanai (Service 1999).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-sized tree in the rue (citrus) family (Rutaceae) with pale to dark gray bark, and lemon-scented leaves. Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Z. hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.,* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. It was last seen on Lanai in 1947 (HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

A summary of populations and landownership for the 37 plant species reported from the island of Lanai is given in Table 3.

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI

Species	Number of current populations	Landownership		
		Federal	State	Private
Abutilon eremitopetalum	1			X
Adenophorus periens	0			
Bidens micrantha	0			
Bonamia menziesii	3			X
Brighamia rockii	0			
Cenchrus agrimonioides	0			
Centaurium sebaeoides	1			X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Ctenitis squamigera	2			X
Cyanea grimesiana ssp. *grimesiana*	2			X
Cyanea lobata	0			
Cyanea macrostegia ssp. *gibsonii*	2			X
Cyperus trachysanthos	0			
Cyrtandra munroi	2			X
Diellia erecta	0			
Diplazium molokaiense	0			
Gahnia lanaiensis	1			X
Hedyotis mannii	2			X
Hedyotis schlechtendahliana var. *remyi*	2			X
Hesperomannia arborescens	0			
Hibiscus brackenridgei	2			X
Isodendrion pyrifolium	0			
Labordia tinifolia var. *lanaiensis*	1			X
Mariscus fauriei	0			
Melicope munroi	2			X
Neraudia sericea	0			
Phyllostegia glabra var. *lanaiensis*	0			
Portulaca sclerocarpa	1			X
Sesbania tomentosa	0			
Silene lanceolata	0			
Solanum incompletum	0			
Spermolepis hawaiiensis	3			X

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Tetramolopium lepidotum ssp. *lepidotum*	0	.....	.....	.....
Tetramolopium remyi	2	.....	.....	X
Vigna o-wahuensis	1	.....	.....	X
Viola lanaiensis	2	.....	.....	X
Zanthoxylum hawaiiense	0	.....	.....	.....

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bonamia menziesii, Brighamia rockii, Cyanea lobata* (as *Cyanea baldwinii*), *Gahnia lanaiensis, Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei,* var. *mokuleianus,* and var. ''from Hawaii''), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Portulaca sclerocarpa, Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata, Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum,* var. *incompletum,* and var. *mauiensis*), *Tetramolopium lepidotum* ssp. *lepidotum, Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), *Viola lanaiensis,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*) were considered endangered; *Cyrtandra munroi, Diellia erecta, Labordia tinifolia* var. *lanaiensis,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Abutilon eremitopetalum, Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera, Cyanea macrostegia* ssp. *gibsonii, Diplazium molokaiense, Isodendrion pyrifolium, Melicope munroi* (as *Pelea munroi*), *Phyllostegia glabra* var. *lanaiensis,* and *Tetramolopium remyi* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyrtandra munroi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi.* The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 37 plant species in the 1980 through 1996 notices of review can be found in Table 4(a). We listed the 37 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 37 PLANT SPECIES ON LANAI

Species	FEDERAL REGISTER Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Abutilon eremitopetalum	C1	C1	C1	.....	.....
Adenophorus periens	C1	C1	C1	.....	.....
Bidens micrantha	C1	C1	C1	.....	.....
Bonamia menziesii	C1	C1	C1	.....	.....
Brighamia rockii	C1	C1	C1	.....	.....
Cenchrus agrimonioides	.....	.....	.....	.....	.....
Centaurium sebaeoides	.....	.....	C1	.....	.....
Clermontia oblongifolia ssp. *mauiensis*	.....	.....	C1	.....	.....
Ctenitis squamigera	C1*	C1*	C1*	.....	.....
Cyanea grimesiana ssp.*grimesiana*	C1	C1	.....	C2	.....
Cyanea lobata	C1	C1	C1	.....	.....
Cyanea macrostegia ssp. *gibsonii*	C1	C1	C1	.....	.....
Cyperus trachysanthos	.....	.....	.....	C2	.....
Cyrtandra munroi	C2	C2	C1	.....	.....
Diellia erecta	C1	C1	C1	.....	.....

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 37 PLANT SPECIES ON LANAI—Continued

Species	FEDERAL REGISTER Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Diplazium molokaiense	C1*	C1*	C1	.....	.....
Gahnia lanaiensis	C1	C1	C1	.....	.....
Hedyotis mannii	C1*	C1*	C1	.....	.....
Hedyotis schlechtendahliana var. *remyi*	.....	.....	C2	C2	C
Hesperomannia arborescens	C1	C1	C1	.....	.....
Hibiscus brackenridgei	C1	C1	C1	.....	.....
Isodendrion pyrifolium	C1*	C1*	3A	.....	.....
Labordia tinifolia var. *lanaiensis*	C2	C2	3C	3C	.....
Mariscus fauriei	.....	.....	C1	.....	.....
Melicope munroi	C1*	C1*	C2	C2	C
Neraudia sericea	3A	3A	C1	.....	.....
Phyllostegia glabra var. *lanaiensis*	C1	C1	C1	.....	.....
Portulaca sclerocarpa	C1	C1	C1	.....	.....
Sesbania tomentosa	C1*	C1*	C1	.....	.....
Silene lanceolata	C1	C1	C1	.....	.....
Solanum incompletum	C1*	C1*	C1	.....	.....
Spermolepis hawaiiensis	.....	.....	C1	.....	.....
Tetramolopium lepidotum ssp. *lepidotum*	C1	C1	C1	.....	.....
Tetramolopium remyi	C1	C1	C1	.....	.....
Vigna o-wahuensis	C1	C1	C1	.....	.....
Viola lanaiensis	C1	C1	C1	.....	.....
Zanthoxylum hawaiiense	C1	C1	C1	.....	.....

Key:
C: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If further research or changes in habitat indicate a significant decline in any of these taxa, they may be reevaluated for possible inclusion in categories C1 or C2.
Federal Register Notices of Review—
1980: 45 FR 82479 1985: 50 FR 39525 1990: 55 FR 6183 1993: 58 FR 51144 1996: 61 FR 7596

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI

Species	Federal status	Proposed rule		Final rule		Purdency and/or proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Abutilon eremitopetalum	E	09/17.90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Adenophorus periens	E	09/14/93	58 FR 48102	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/29/00	65 FR 83157
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/7/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						01/28/02	67 FR 3940
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Clermontia oblongifolia ssp. *mauiensis*.	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 8315
Cyanea grimesiana ssp. *grimesiana*.	E	10/02/95	60 FR 51417	10/10/96	64 FR 53108	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 8315
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea macrostegia ssp. *gilsonii*.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Cyperus trachysanthos	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/0	65 FR 66808
						01/28/02	67 FR 3940

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI—Continued

Species	Federal status	Proposed rule		Final rule		Purdency and/or proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Diplazium molokaiense	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Gahnia lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
Hedyotis schlechtendahliana var. *remyi*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	01/28/02	67 FR 3940
Labordia tinifolia var. *lanaiensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/29/00	65 FR 83157
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Phyllostegia glabra var. *lanaiensis*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/29/00	65 FR 83157
Portulaca sclerocarpa	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/27/00	65 FR 82086
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	01/28/02	67 FR 3940
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
						12/28/00	67 FR 3940
Tetramolopium lepidotum ssp. *lepidotum*	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Viola lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						12/28/00	67 FR 3940
						01/28/02	

Key: E= Endangered, T= Threatened

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*) and not prudent for the other 34 plants because it would not benefit the plant or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 34 of the 37 species reported from Lanai. Among other things, the court held that, in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* (64 FR 48307), we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these three taxa, along with seven others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

In early February 2000, we hand-delivered a letter to representatives of the private landowner on Lanai requesting any information considered germane to the management of any of the 37 plants on the island, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants on Lanai, and a handout containing general information on critical habitat. On April 4, 2000, we met with representatives of the landowner to discuss their current land management activities. In addition, we met with Maui County DOFAW staff and discussed their management activities on Lanai.

On December 27, 2000, we published the third of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for 18 Lanai plants (65 FR 82086). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals we determined that critical habitat was prudent for 33 species (*Abutilon eremitopetalum*, *Adenophorus periens*, *Bidens micrantha* ssp. *kalealaha*, *Bonamia menziesii*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyperus trachysanthos*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiense*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Labordia tinifolia* var. *lanaiensis*, *Mariscus fauriei*, *Melicope munroi*, *Neraudia sericea*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium remyi*, *Vigna o-wahuensis*, *Viola lanaiensis*, and *Zanthoxylum hawaiiense*) that are reported from Lanai as well as on Kauai, Niihau, Maui, Kahoolawe, and Molokai.

In the December 27, 2000, proposal we determined that it was prudent to designate approximately 1,953 ha (4,826 ac) on Lanai as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on February 26, 2001. On February 22, 2001, we published a notice (66 FR 11133) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Lanai and a notice of a public hearing. On March 22, 2001, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On April 6, 2001, we published a notice (66 FR 18223) announcing corrections to the proposed rule. These corrections included changes to the map of general locations of units and new UTM coordinates and increased the total proposed critical habitat to 2,034 ha (5,027 ac).

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to

designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, in the Kauai revised proposal, we determined that designation of critical habitat was prudent for *Isodendrion pyrifolium* and *Solanum incompletum*, two species reported from Lanai as well as Kauai, Maui, and Molokai. The designation of critical habitat is proposed for both of these species on Lanai. Publication of this revised proposal for plants from Lanai is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the December 27, 2000, proposed rule (65 FR 82086), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on February 26, 2001. We reopened the comment period from February 22, 2001, to April 2, 2001 (66 FR 11133), to accept comments on the proposed designations and to hold a public hearing on March 22, 2001, in Lanai City, Lanai.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on January 8, 2001, and the *Maui News* on January 4, 2001. We received one request for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and in the *Maui News* newspapers on March 2, 2001. A transcript of the hearing held in Lanai City, Lanai on March 22, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Lanai plants to peer review the proposed critical habitat designations. One peer reviewer submitted comments on the proposed critical habitat designations, providing updated biological information, critical review, and editorial comments.

We received a total of two oral comments, three written comments, and two comments both in written and oral form during the two comment periods. These included responses from one State office, and six private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Lanai plants. Of the seven comments we received, five supported designation, one was opposed and one provided information and declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat determinations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment*: The designation of critical habitat for these plant species in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the conservation of these species.

Our Response: We agree. Our recovery plans for these species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001) identify the need to expand existing populations and reestablish wild populations within their historical range. We have revised the December 27, 2000, proposal to include areas of unoccupied habitat for some of the species from Lanai.

(2) *Comment*: The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, some of the data used by the Service was 30 years old or older.

Our Response: When developing the December 27, 2000, proposal to designate critical habitat for 18 plants from Lanai, we used the best scientific and commercial data available at the time, including but not limited to information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information, and address comments and new information received during the comment periods. This additional information comes from Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership), and information received during the public comment periods and the public hearing (R. Hobdy, *in litt.* 2001; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001).

(3) *Comment*: The proposed critical habitat designations should be delayed until a coordinated plan with public input is coordinated.

Our Response: We must comply with the orders of the Federal courts. As stated earlier, on August 10, 1998, the Court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074). On March 28, 2000, the Court ordered us to integrate 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule for designating critical habitat for the other 245 Hawaiian plants.

On December 27, 2000, we published the third of the court-ordered prudency determinations and/or proposed critical habitat designations, for 18 Lanai plants (65 FR 82086). On October 5, 2001, the joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), Molokai (October 16, 2002) was approved and ordered by the court.

Publication of this revised proposed critical habitat designations for Lanai plants is consistent with the court-ordered stipulation.

Issue 2: Site-specific Biological Comments

(4) *Comment*: Critical habitat should be designated for *Phyllostegia glabra* var. *lanaiensis* because habitats have not been adequately surveyed and this species may still be extant in the wild.

Our Response: No change is made here to the prudency determination for

Phyllostegia glabra var. *lanaiensis*, a species known only from Kaiholena on Lanai, published in the December 27, 2000, proposal (65 FR 82086). *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai for over 80 years. This species was last observed at Kaiholena on Lanai in 1914 and has not been observed since. A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (R. Hobdy, pers. comm., 1992). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Phyllostegia glabra* var. *lanaiensis* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

Issue 3: Legal Issues

(5) *Comment*: The Service failed to comply with court deadlines set forth in both *Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 1074 (D.Haw. 1998), and *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 (D.Haw. Mar. 28, 2000).

Our Response: The proposed rules for plants from Kauai, Niihau, Maui, Kahoolawe, Lanai, and Molokai were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods on the December 27, 2000, proposal for plants from Lanai. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Lanai is consistent with the joint stipulation.

(6) *Comment:* The Service should designate critical habitat on the Kanepuu Preserves since excluding them potentially violates the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable'' (16 U.S.C. 1533(a)(3)).

Our Response: Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

The Service found that the plants and their habitats within the Kanepuu Preserve receive long-term protection and management and, thus these lands are not in need of special management considerations or protection. In our December 27, 2000, proposal we determined that the lands within the Kanepuu Preserve do not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. No change is made to this determination in this revised proposal. Should the status of this preserve change, for example by non-renewal of a partnership agreement or termination of funding, we will reconsider whether the lands within Kanepuu Preserve meet the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time 50 CFR 424.12(g).

Issue 4: Mapping and Primary Constituent Elements

(7a) *Comment:* The designated areas are too large. (7b) *Comment:* The units are not large enough, and don't allow for changes that occur during known environmental processes. (7c) *Comment:* Make units B, C, D, E, F, H, I , and J smaller. (7d) *Comment:* The highly irregular and fragmented shape of proposed units make it difficult to determine if projects are within critical habitat.

Our Response: We have revised the proposed designations published in the December 27, 2000, proposal for Lanai plants to incorporate new information, and address comments and new information received during the comment periods. Areas that contain habitat necessary for the conservation of the species were identified and delineated on a species by species basis. When species units overlapped, we combined units for ease of mapping (see also Methods section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of 32 plant species from Lanai.

Issue 5: Effects of Designation

(8) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program).

Our Response: We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat requires Federal agencies to consult under section 7 of the Act with us on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies cannot result in jeopardy to listed species, and they cannot adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the conservation of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs are implemented consistent with this need.

(9) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. Its regulatory implications apply only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing, and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans.

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the

island of Lanai on December 27, 2000. In proposals published on November 7, 2000, and December 18, 2000, we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai and Niihau, and Maui and Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii* (we incorrectly determined prudency for this species in the December 27, 2000, proposal as well), *Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999, we determined that the designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 82086, 65 FR 66808, 65 FR 79192).

In the December 27, 2000, proposal we determined that critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* a species endemic to Lanai, because it had not been seen since 1914 and no viable genetic material of this species is known to exist. No change is made here to the December 27, 2000, prudency determination for *Phyllostegia glabra* var. *lanaiensis* and it is hereby incorporated by reference (65 FR 82086).

In the December 27, 2000, proposal we proposed designation of critical habitat for 18 plants from the island of Lanai. These species are: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi,* and *Viola lanaiensis.* In this proposal, we have revised the proposed designations for these 18 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 27, 2000, proposal.

In the December 27, 2000, proposal, we did not propose designation of critical habitat on Lanai for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus faurei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (65 FR 66808), December 18, 2000 (65 FR 79192), December 29, 2000 (65 FR 83157), and January 28, 2002 (67 FR 3940). In this proposal we incorporate the prudency determinations for these 16 species and propose designation of critical habitat for *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Sesbania tomentosa,* and *Solanum incompletum* on the island of Lanai, based on new information and information received during the comment periods on the December 27, 2000, proposal. Critical habitat is not proposed on Lanai for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* because they no longer occur on Lanai and we are unable to identify habitat which is essential to their conservation on this island.

In this proposal, we determine that critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum* for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). However, critical habitat for this species is not included in this proposal because it no longer occurs on Lanai and we are unable to identify habitat which is essential to its conservation on this island.

Based on a review of new biological information and public comments received we have revised our December 27, 2000, proposal to incorporate the following additional changes: changes in our approach to delineating proposed critical habitat (see *Criteria Used to Identify Critical Habitat*); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid nonessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and inclusion of new areas, such as Hawaiilanui Gulch within unit Lanai C and Paliamano Gulch within unit Lanai F, that are essential for the conservation of one or more of the 32 plant species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where

significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the island of Lanai on December 27, 2000. In proposals published on November 7, 2000, and December 18, 2000, we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai and Niihau, and Maui and Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999, we determined that the designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086).

No change is made here to the prudency determination for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Lanai, published in the December 27, 2000, proposal and hereby incorporated by reference (65 FR 82086). *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai since 1914. In addition, this plant is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Phyllostegia glabra* var. *lanaiensis* was not prudent because such designation would be of no benefit to this taxon. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

In the December 27, 2000, proposal, we did not determine prudency nor propose designation of critical habitat for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (Kauai and Niihau), December 18, 2000 (Maui and Kahoolawe), December 29, 2000 (Molokai), and January 28, 2002 (Kauai reproposal). No change is made to these prudency determinations for these 16 species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, 65 FR 83157, 67 FR 3940). Critical habitat is not proposed for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* on the island of Lanai because we are unable to identify habitat which is essential to their conservation on this island.

To determine whether critical habitat would be prudent for *Tetramolopium lepidotum* spp. *lepidotum,* a species for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu) we analyzed the potential threats and benefits for this species in accordance with the court orders. This plant was listed as an endangered species under the Endangered Species Act of 1973, as amended (Act) in 1991. At that time, we determined that designation of critical habitat for *Tetramolopium lepidotum* spp. *lepidotum* was not prudent because

designation would increase the degree of threat to this species and/or would not benefit the plant. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *T. lepidotum* ssp. *lepidotum* in the future, consistent with applicable regulations (50 CFR 424, 12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *T. lepidotum* ssp. *lepidotum* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Tetramolopium lepidotum* ssp. *lepidotum* is reported from Federal lands on Oahu (the U.S. Army's Schofield Barracks Military Reservation) where actions are subject to section 7 consultation, as well as on State and private lands. Although currently there may be limited Federal activities on these State and private lands, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *T. lepidotum* ssp. *lepidotum* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of this species and dissemination of information regarding its essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum.*

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha ssp. kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia ssp. mauiensis, Ctenitis squamigera, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia ssp. gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana var. remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia var. lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum ssp. lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense.* This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 36 species; the December 27, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; 65 FR 82086; GDSI 2000).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the 32 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are

protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In the December 27, 2000, proposal we identified the physical and biological features that are considered essential to the conservation of the 19 species on the island of Lanai (65 FR 82086). Based on new information and information received during the comment periods on the December 27, 2000, proposal we have revised our description of these physical and biological features in this proposal.

In the December 27, 2000, proposal we did not propose designation of critical habitat for the 16 species that no longer occur on Lanai but are reported from one or more other islands and for which we had determined, in other rules, that designation of critical habitat was prudent. Based on new information and information received during the comment periods on the December 27, 2000, proposal, we have identified the physical and biological features on Lanai that are considered essential to the conservation of 13 of the 16 species. We are unable to identify these features for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense,* which no longer occur on the island of Lanai, because information on the physical and biological features (i.e., the primary constituent elements) that are considered essential to the conservation of these three species on Lanai is not known. *Mariscus faurei* and *Silene lanceolata* have not been observed on Lanai since 1930 while *Zanthoxylum hawaiiense* has not been observed on Lanai since 1947, and we are not able to identify the primary constituent elements that are considered essential to their conservation on Lanai from the historical records. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of these species on the island of Lanai. However, proposed critical habitat designations for *Mariscus fauriei, Silene lanceolata,* and *Zanthoxylum hawaiiense* were included in proposals published on November 7, 2000, December 18, 2000, or on December 29, 2000 (65 FR 66808, 65 FR 79192, 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Mariscus fauriei, Silene lanceolata,* and *Zanthoxylum hawaiiense* within the historic range for each species on other Hawaiian islands.

In this proposal, we determine that the designation of critical habitat is prudent for one species (*Tetramolopium lepidotum* ssp. *lepidotum*) for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). We are unable to identify the physical and biological features that are considered essential for the conservation of *Tetramolopium lepidotum* ssp. *lepidotum,* which no longer occurs on the island of Lanai, because information on the physical and biological features (i.e., the primary constituent elements) that are considered essential to the conservation of this species on Lanai is not known. *Tetramolopium lepidotum* ssp. *lepidotum* has not been observed on Lanai since 1928, and we are not able to identify the primary constituent elements that are considered essential to its conservation on Lanai from the historical record. Therefore, we are not able to identify the specific areas outside the geographic areas occupied by this species at the time of its listing (unoccupied habitat or where the species is not present) that are essential for the conservation of *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai. However, we will consider proposing designation of critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* within the historic range for this species on other Hawaiian islands.

All areas proposed as critical habitat are within the historical range of one or more of the 32 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 32 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Lanai.

D. Criteria Used To Identify Critical Habitat

In the December 27, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we proposed to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 18 plant species. Specific details regarding the delineation of the proposed critical habitat units are given in the December 27, 2000, proposal (65 FR 82086). In that proposal we did not include potentially suitable unoccupied habitat that is important to the conservation of the 18 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

However, following publication of the December 27, 2000 (65 FR 82086) proposal we received new information regarding the physical and biological features that are considered essential for the conservation of many of these 32 species and information on potentially suitable habitat within the historical range for many of these species. Based on a review of this new biological information and public comments received following publication of the other three proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990;

Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 32 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island (*e.g., Gahnia lanaiensis* and *Viola lanaiensis*), and the proposed critical habitat designations reflect this exception for these species. To be considered recovered each population of a species endemic to the island of Lanai should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains 100, 300, or 500 individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, that could destroy a large percentage of a species at any one time, may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is *longevity* (i.e., long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of

species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more island(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements based on the general habitat features of the areas in which the plants are reported from such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 32 plant species.

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

1. We focused on designating units representative of the known current and historical geographic and elevational range of each species;

2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

3. Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996). For each multi-island species we evaluated areas that have been proposed as critical habitat for each species in other published critical habitat proposals to determine if additional areas were essential on Lanai for the conservation of the species. If additional areas, on Lanai, were determined to be essential for the species' conservation we then followed the afore-mentioned protocol to delineate proposed critical habitat for the species.

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 32 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations for some larger proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, section 7 consultation is generally necessary and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 32 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing man-made features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the

best available information, we believe these areas constitute the habitat necessary on Lanai to provide for the recovery of these 32 species.

E. Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 32 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, we contacted the major private landowner on Lanai by mail and we met with the landowner's representatives in April 2000 to discuss their current management for the plants on their lands. We also met with Maui County DOFAW office staff to discuss management activities they are conducting on Lanai. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining whether a management plan or agreement provides a conservation benefit to the species, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Bruegmann *et al.* 2001);

(2) The recommendations from the HPPRCC in their 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 32 species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone et al. 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001): feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access. On a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical

requirements of the species and the location(s) of the individual plants.

As shown in Table 3, the proposed critical habitat designations for 32 species of plants are found on private lands on the island of Lanai. Information received in response to our public notices, meetings with representatives of the landowner and Maui County, DOFAW staff, the December 27, 2000, proposal, public comment periods, and the March 22, 2001, public hearing, as well as information in our files, indicated that there is little on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Private Lands

One species (*Bonamia menziesii*) is reported from The Nature Conservancy of Hawaii's Kanepuu Preserve which is located in the northeast central portion of Lanai (GDSI 2000; HINHP Database 2000; The Nature Conservancy of Hawaii (TNCH) 1997). This preserve was established by a grant of a perpetual conservation easement from the private landowner to TNCH and is included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there is always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing 6 year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the State Department of Land and Natural Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11, and Hawaii Administrative Rules Sec. 13–210.

The management program within the preserve is documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plant and its habitat within the preserve (TNCH 1997, 1998, 1999). These management measures address the factors which led to the listing of this species including control of non-native species of ungulates, rodents, and weeds; and fire control. In addition, habitat restoration and monitoring are also included in these plans.

The primary goals within Kanepuu Preserve are to: (1) Control non-native species; (2) suppress wildfires; and (3) restore the integrity of the dryland forest ecosystem through monitoring and research. Specific management actions to address feral ungulates include the replacement of fences around some of the management units with Benzinal-coated wire fences as well as staff hunting and implementation of a volunteer hunting program with the DLNR. Additionally, a small mammal control program has been established to prevent small mammals from damaging rare native species and limit their impact on the preserve's overall native biota.

To prevent further displacement of native vegetation by non-native plants, a non-native plant control plan has been developed, which includes monitoring of previously treated areas, and the control of non-native plants in management units with restoration projects.

The fire control program focuses on suppression and pre-suppression. Suppression activities consist of coordination with State and county fire-fighting agencies to develop a Wildfire Management Plan for the preserve (TNCH 1998). Pre-suppression activities include mowing inside and outside of the fence line to minimize fuels.

A restoration, research, and monitoring program has been developed at Kanepuu to create a naturally regenerating *Nestegis sandwicensis-Diospyros sandwicensis* dryland forest, and expand the current range of native-dominated vegetation. Several years of casual observation indicate that substantial natural regeneration is occurring within native forest patches in the deer-free units (TNCH 1999). A draft of the Kanepuu Restoration Plan was completed in June 1999. This plan identifies sites for rare plant outplanting and other restoration activities. Monitoring is an important component to measure the success or failure rate of the animal and weed control programs. Management of these non-native species control programs is continually amended to preserve the ecological integrity of the preserve.

Because this plant and its habitat within the preserve is protected and managed, this area is not in need of special management considerations or protection. Therefore, we have determined that the private land within Kanepuu Preserve does not meet the definition of critical habitat in the Act, and we are not proposing to designate this land as critical habitat. Should the status of this reserve change, for example, by non-renewal of the partnership agreement or termination of NAP funding, we will reconsider whether it meets the definition of critical habitat, and if so, we may propose to amend critical habitat to include the preserve at that time (50 CFR 424.12(g)).

We believe that Kanepuu Preserve is the only potential critical habitat area on Lanai at this time that does not require special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach. If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 32 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

The proposed critical habitat areas described below constitute our best

assessment of the physical and biological features needed for the conservation of the 32 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this revised proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

Proposed critical habitat includes habitat for these 32 species predominantly on the eastern side of Lanai in the Lanaihale area. Lands proposed as critical habitat have been divided into 8 units (Lanai A through Lanai H). A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]

Unit name	State/Local	Private	Federal	Total
Lanai A		574 ha (1,418 ac)		574 ha (1,418 ac)
Lanai B		551 ha (1,363 ac)		551 ha (1,363 ac)
Lanai C		222 ha (549 ac)		222 ha (549 ac)
Lanai D		5,861 ha (14,482 ac)		5,861 ha (14,482 ac)
Lanai E		162 ha (400 ac)		162 ha (400 ac)
Lanai F		331 ha (818 ac)		331 ha (818 ac)
Lanai G		151 ha (373 ac)		151 ha (373 ac)
Lanai H		1 ha (2 ac)		1 ha (2 ac)
Grand Total		7,853 ha (19,405 ac)		7,853 ha (19,405 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or difference due to rounding.

Descriptions of Critical Habitat Units

Lanai A

The proposed unit Lanai A provides occupied habitat for one species, *Hibiscus brackenridgei*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more of the 8 to10 populations and 300 mature individuals per population for *Hibiscus brackenridgei*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai A below).

This unit provides unoccupied habitat for one species, *Cyperus trachysanthos*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations, with 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai A below).

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Table for Lanai A

Species	Cyperus trachysanthos	Hibiscus brackenridgei
1. 8–10 pop. guidelines.	X*	X*
2. Island endemic.		
3. Multi-island/current other islands.	X**	X
4. Multi-island/no current other islands.		
5. Non-viable populations.	X	X
6. Several occ. vulnerable to destruction.		
7. Species with variable habitats.		X
8. Not all occupied habitat needed.		
9. Long-lived perennial–100/pop.		
10. Short-lived perennial–300/pop.	X	X
11. Annual–500/pop.		
12. Narrow endemic.		
13. Restricted habitat requirements.	X** *	
14. Hybridization is possible.		
Notes	*Species is wide ranging.‡ **Historical on Lanai. ***Seeps.	*Species is wide ranging.‡

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The unit contains a total of 574 ha (1,418 ac) on privately owned land. It is bounded on the north by Puumaiekahi watershed and on the south by Kaapahu watershed. The natural features include: Kaea, Kaena Point, Kaenaiki Cape, and Keanapapa Point.

Lanai B

The proposed unit Lanai B provides occupied habitat for one species, *Tetramolopium remyi*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai and provides habitat to support one or more of the 8 to10 populations of 300 mature individuals per population for *Tetramolopium remyi*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai B below).

The unit contains a total of 551 ha (1,363 ac) on privately owned land. It is bounded on the west by Puumaiekahi watershed and on the east by Lapaiki watershed. The natural features include: Puumaiekahi Gulch and Lapaiki Gulch.

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Table for Lanai B

Notes	*Red sandy loam soil in dry Dodonaea viscosa/Heteropogon contortus communities.
14. Hybridization is possible.	
13. Restricted habitat requirements.	X*
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	X
3. Multi-island/current other islands.	
2. Island endemic.	
1. 8–10 pop. guidelines.	X
Species	Tetramolopium remyi

BILLING CODE 4310–55–C

Lanai C

The proposed unit Lanai C provides unoccupied habitat for one species, *Sesbania tomentosa*. Designation of this unit is essential to the conservation of *S. tomentosa* because it contains the physical and biological features that are considered essential for its conservation on Lanai, and it provides habitat to support one or more additional populations necessary to meet the recovery objectives, throughout its known historical range, of 8 to 10 populations with 300 mature individuals per population considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai C below).

The unit contains a total of 222 ha (549 ac) on privately owned land. It is bounded on the west by Lapaiki watershed and on the east by Hawaiilanui watershed. The natural features include: Hawaiilanui Gulch.

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Table for Lanai C

Notes	*Species is wide ranging.‡ **Historical on Lanai.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	
5. Non-viable populations.	X**
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X**
2. Island endemic.	
1. 8–10 pop. guidelines.	X*
Species	Sesbania tomentosa

BILLING CODE 4310–55–C

Lanai D

The proposed unit Lanai D provides occupied habitat for 17 species: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi,* and *Viola lanaiensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Lanai, and provides habitat to support one or more of the 8 to 10 populations of 100 mature individuals per population for *Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* or 300 mature individuals per population for *Bonamia menziesii, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Tetramolopium remyi,* and *Viola lanaiensis,* or 500 mature individuals per population for *Centaurium sebaeoides* and *Spermolepis hawaiiense* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Lanai D below). This unit provides unoccupied habitat for 11 species: *Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species of 100 mature individuals per population for *Brighamia rockii* and *Hesperomannia arborescens,* or 300 mature individuals per population for *Adenophorus periens, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Lanai D below).

The unit contains a total of 5,861 ha (14,482 ac) on privately owned land. It is in portions of the Awehi, Halulu, Haua, Hauola, Kaa, Kahea, Kapoho, Kapua, Kuahua, Lopa, Maunalei, Naha, Nahoko, Palawai Basin, Poaiwa, Wahane, and Waiopa watersheds. The natural features include: Haalelepaakai (summit), Hookio Gulch, Kaaealii (summit), Kaapahu (summit), Kahinahina Ridge, Kamiki Ridge, Kaonohiokala Ridge, Kauiki (summit), Lanaihale (summit), Naio Gulch, Palea Ridge, Puhielelu Ridge, Puu Aalii, Puu Alii, Puu Kole, Puu Nene, Umi, Mauna o (summit), Waialala Gulch, and Wawaeku (summit).

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Table for Lanai D

Species	Abutilon eremitopetalum
1. 8–10 pop. guidelines.	X
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	X
10. Short-lived perennial–300/pop.	
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	
Notes	*Lower gulch slopes and gulch bottoms with red sandy soil and rock in lowland dry Erythrina sandwicensis-Diospyros ferrea.

Adenophorus periens	X*		X	X**		X			X			*Species is wide ranging.‡ **Historical on Lanai.
Bonamia menziesii	X*		X	X		X			X			*Species is wide ranging.‡
Brighamia rockii	X		X*	X*			X			X**		*Historical on Lanai. **Ledges on steep rocky cliffs (but not sea cliffs; the location is inland).
Cenchrus agrimonioides	X*		X**	X**		X			X			*Species is wide ranging.‡ **Historical on Lanai.
Centaurium sebaeoides	X*		X	X	X					X**		*Species is wide ranging.‡ **Dry ledges.
Clermontia oblongifolia ssp. mauiensis	X		X	X	X	X			X			

Ctenitis squamigera	X*		X		X	X	X	X		X				*Species is wide ranging.‡
Cyanea grimesiana ssp. grimesiana	X*		X		X	X				X			X**	*Species is wide ranging.‡ **Rocky or steep slopes of stream banks.
Cyanea lobata	X		X*		X*					X			X**	*Historical on Lanai. **Gulches.
Cyanea macrostegia ssp. gibsonii	X*	X			X	X	X		X					*Not enough suitable habitat for 8-10.
Cyrtandra munroi	X		X		X	X	X			X				
Diellia erecta	X*		X**		X**		X			X				*Species is wide ranging.‡ **Historical on Lanai.
Diplazium molokaiense	X*		X**		X**		X			X				*Species is wide ranging.‡ **Historical on Lanai.

Gahnia lanaiensis	X*	X			X	X	X			X		X			*Species is wide ranging.‡
Hedyotis mannii	X		X		X	X				X			X*		*Dark, narrow, rocky gulch walls or steep stream banks in wet forest.
Hedyotis schlechtendahliana var. remyi	X	X			X	X				X			X*		*Windswept ridges.
Hesperomannia arborescens	X*		X**		X**		X		X						*Species is wide ranging.‡ **Historical on Lanai.
Hibiscus brackenridgei	X*		X		X		X			X					*Species is wide ranging.‡
Isodendrion pyrifolium	X		X*		X*		X			X					*Historical on Lanai.
Labordia tinifolia var. lanaiensis	X*	X			X	X	X		X						*Species is wide ranging.‡
Melicope munroi	X*			X	X	X	X		X						*Species is wide ranging.‡

Neraudia sericea	X		X*		X		X					*Historical on Lanai.
Solanum incompletum	X		X*		X		X					*Historical on Lanai.
Spermolepis hawaiiensis	X*		X		X	X		X				*Species is wide ranging.‡
Tetramolopium remyi	X			X	X	X				X*		*Red sandy loam soil in dry Dodonaea viscosa-Heteropogon contortus communities.
Vigna o-wahuensis	X*		X		X	X	X		X			*Species is wide ranging.‡
Viola lanaiensis	X*	X			X	X	X		X		X	*Species is wide ranging.‡

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Lanai E

The proposed unit Lanai E (units E1, E2, and E3) provides unoccupied habitat for one species, *Bidens micrantha* ssp. *kalealaha.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai E below).

The unit cluster contains a total of 162 ha (400 ac) on privately owned land. It is contained in the Palawai Basin watershed. The natural features include: in E1, Kapohaku Gulch; in E2, Waiakaiole Gulch and Waipaa Gulch; and in E3, Palikoae Gulch.

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Table for Lanai E

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Bidens micrantha ssp. kalealaha	X		X*		X*					X			X**		*Historical on Lanai. **Gulches or gulch slopes.

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Lanai F

The proposed unit Lanai F provides unoccupied habitat for one species, *Hibiscus brackenridgei.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai F below).

The unit contains a total of 331 ha (818 ac) on privately owned land. It is completely within the Paliamano watershed. The natural features include: Paliamano Gulch.

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Table for Lanai F

Species	Notes
	*Species is wide ranging.‡
Hibiscus brackenridgei	X*
1. 8–10 pop. guidelines.	
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	
7. Species with variable habitats.	X
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	
14. Hybridization is possible.	

BILLING CODE 4310–55–C

Lanai G

The proposed unit Lanai G provides unoccupied habitat for one species, *Portulaca sclerocarpa*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai G below).

The unit contains a total of 151 ha (373 ac) on privately owned land. It is bounded on the west by Anapuka watershed and on the east by Manele watershed. The natural features include: Huawai Bay, Kaluakoi Point, and the western portion of Kapihua Bay.

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Table for Lanai G

Species	Notes
	*Species is wide ranging.‡ **Exposed ledges with thin soil in coastal areas.
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	
Portulaca sclerocarpa	

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Lanai H

The proposed unit Lanai H provides occupied habitat for one species, *Portulaca sclerocarpa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more of the 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the discussion of conservation requirements in Section D) (see Table Lanai H below).

The unit contains a total of 1 ha (2 ac) on privately owned land. The natural features include: Poopoo Islet.

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Table for Lanai H

Species	Notes
Portulaca sclerocarpa	*Species is wide ranging.‡‡ **Exposed ledges with thin soil in coastal areas.
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	

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Key for Tables Lanai A–H

‡Not all suitable habitat is proposed to be designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self-perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.
2. Island endemic.
3. Multi-island species with current locations on other islands.
4. Multi-island species with no current locations on other islands.
5. Current locations do not necessarily represent viable populations with the required number of mature individuals.
6. Several current locations may be affected by one naturally occurring, catastrophic event.
7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.
8. Not all currently occupied habitat was determined to be essential to the recovery of the species.
9. Life history, long-lived perennial—100 mature, reproducing individuals needed per population.
10. Life history, short-lived perennial—300 mature, reproducing individuals needed per population.
11. Life history, annual—500 mature, reproducing individuals needed per population.
12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.
13. Species has extremely restricted, specific habitat requirements.
14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out, do not destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14 as if a species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion. (See 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of one or more of the 32 plant species will require Section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to—

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral

ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits attributable to listing these 32 plant species, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with listing and with critical habitat designation. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and reopen the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threats to these listed species.

We are aware that the State of Hawaii and the private landowner is considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Lanai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudency determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for the 32 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.,* hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(7) The methodology we might use, under section 4(b)(2) of the Act, in

determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

The comment period closes on May 3, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to the Field Supervisor, Pacific Islands Office (see **ADDRESSES**).

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* and *Cyanea lobata* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical habitat on Lanai before we can prepare and publish a notice of taxonomic changes for these two species. We plan to publish a taxonomic change notice for these two species after we have published the final critical habitat designations on Lanai. At that time we will evaluate the critical habitat designations on Lanai for these two species in light of any changes that may result from taxonomic changes in each species current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

a. We will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 32 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 32 PLANTS FROM THE ISLAND OF LANAI

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal activities potentially affected.[2].	Activities the Federal Government (*e.g.,* Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of the Interior) carries out or that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat)..	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected.[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destory habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal agencies in desgianted areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

b. We do not expect this rule to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 32 plant species since their listing between 1991 and 1999. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

d. OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities

because the lands which are proposed for critical habitat designation are solely owned by one landowner, Castle and Cooke Resorts, which is not a small entity as defined below. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 32 plant species were listed (between 1991 and 1999), there have been no formal consultations and seven informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. Two informal consultations were conducted on behalf of a private consulting firm, representing Maui Electric Company, who requested species lists for a proposed generating station at Miki Basin. None of the 32 species were reported from this area. Two informal consultations were conducted on behalf of the Federal Aviation Administration for airport navigational or improvement projects. None of the 32 species were reported from the project areas. One informal consultation was conducted on behalf of the U.S. Department of the Navy regarding nighttime, low-altitude terrain flights and confined area landings over and on limited areas of northwestern Lanai by the Marine Corps. None of the 32 species were reported from the project area. One informal consultation was conducted on behalf of NRCS for the construction of a wildlife exclusion fence and removal of alien ungulates from the enclosure, control of invasive alien plants within the enclosure, and outplanting of native plants in the Lanaihale watershed area. Thirty of the 32 species, *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* were reported from the project area. Funding for the project will be provided by NRCS, through their Wildlife Habitat Incentive Program, to Castle and Cooke Resorts. One informal consultation was conducted on behalf of the Service, for the effects of fencing and replanting on listed and endangered species within Awehi Gulch. None of the 32 species were reported from the Awehi Gulch project area. In addition, we are in the early stages of defining a project area in the Lanaihale watershed for fencing and restoration of native vegetation. Funding for the project will be provided by the Service to Castle and Cooke Resorts, in partnership with the State Department of Land and Natural Resources.

We have determined that Maui Electric Company is not a small entity because it is not an independent non-profit organization, small governmental jurisdiction, nor a small business. The Federal Aviation Administration, U.S. Department of the Navy, and NRCS are not small entities. The informal consultations on the Lanaihale watershed area project and the Awehi Gulch project indirectly affected or concerned the major landowner on Lanai, Castle and Cooke Resorts. We have determined that Castle and Cooke Resorts is not a small entity because it is not a small retail and service business with less than $5 million in annual sales nor is it a small agricultural business with annual sales less than $750,000.

We concurred with NRCS's determination that the Lanaihale watershed area project, as proposed, and the only project in which any of the plant species at issue were reported in, was not likely to adversely affect listed species. At this time, only the Lanaihale watershed area project is ongoing. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Lanai.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because all but one of the proposed critical habitat areas are occupied by at least one species. Other than the Federally funded habitat restoration projects in the Lanaihale watershed area, we are aware of relatively few activities in the proposed critical habitat areas for these 32 plants that have Federal involvement, and thus, would require consultation for on-going projects. As mentioned above, currently we have conducted only seven informal consultations under section 7 on Lanai, and only one consultation involved any of the 32 species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Lanai, all of the proposed designations are on private land under one landowner. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. The majority of this land (about 71 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 27 percent of this land is within the State Agricultural District, approximately less than one percent is within the State Urban District and approximately less than one percent is within the State Rural District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and would likely affect only the major landowner on the island (who is not a small entity), within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would be federal funds, permits, or authorizations in these coastal areas.

Lands that are within the State Rural District are primarily located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require federal funds, permits, or authorizations in these coastal areas.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these 32 species from Lanai, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measure included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner, and because as discussed above, we do not believe there will be a substantial number of small entities affected by Act's consultation requirements.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations.

In summary, as stated above, this proposed rule would not affect small entities because all of the designations are on lands under one landownership. The landowner is not a small entity and, therefore, this proposed rule would not affect a substantial number of small entities and would not result in a significant economic effect on a substantial number of small entities. Most of this private land within the

proposed designation is currently being used for recreational or conservation purposes, and therefore, not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels, all under one ownership, and, therefore, would not affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect the single landowner. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, or should landownership change on the island of Lanai, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 32 species from Lanai in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 32 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because only 4 of 8 areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 32 plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of

information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 32 plant species. Therefore, designation of critical habitat for these 32 species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Marigold Zoll, Christa Russell, Michelle Stephens, and Gregory Koob (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Abutilon eremitopetalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* under ''FLOWERING PLANTS'' and *Adenophorus periens, Ctenitis squamigera, Diellia erecta,* and *Diplazium molokaiense* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Abutilon eremitopetalum	none	U.S.A (HI)	Malvaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha*.	Kookoolau	U.S.A (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bonamia menziesii	none	U.S.A (HI)	Convolvulaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Brighamia rockii	Pua ala	U.S.A (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Cenchrus agromonioides	Kamanomano (=sandbur, agrimony).	U.S.A (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides	Awiwi	U.S.A (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis*.	Oha wai	U.S.A (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A (HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea lobata	Haha	U.S.A (HI)	Campanulaceae	E	467	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Cyanea macrostegia ssp. gibsonii.	none	U.S.A. (HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyperus trachysanthos	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.96(a)	(NA)
*	*	*	*	*	*		*
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Gahnia lanaiensis	none	U.S.A. (HI)	Cyperaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis sclechtendahliana var. *remyi*.	Kopa	U.S.A. (HI)	Rubiaceae	E	441	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	none	U.S.A. (HI)	Asteraceae	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Labordia tinifolia var. *lanaiensis*.	Kamakahala	U.S.A. (HI)	Loganiaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Melicope munroi	Alani	U.S.A. (HI)	Rutaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	none	U.S.A. (HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Portulaca sclerocarpa	Poe	U.S.A. (HI)	Portulacaceae	E	432	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Solanum incompletum	Popolo ku mai	U.S.A. (HI)	Solanaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis	none	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Tetramalopium remyi	none	U.S.A. (HI)	Asteraceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	none	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Viola lanaiensis	none	U.S.A. (HI)	Violaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
Diplazium molokiaense ..	none	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*	*	*

3. Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), and 67 FR 4072 (January 28, 2002) is proposed to be further amended as follows:

a. Revise the heading of paragraph (a) to read ''Critical habitat unit descriptions and maps by State'';

b. Revise the heading of paragraph (b) to read ''All other critical habitat unit descriptions and maps by Family'';

c. Revise the introductory text of paragraph (a)(1)(i);

d. Add paragraph (a)(1)(i)(E);

e. Revise paragraph (a)(1)(ii).

The revised and added text reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

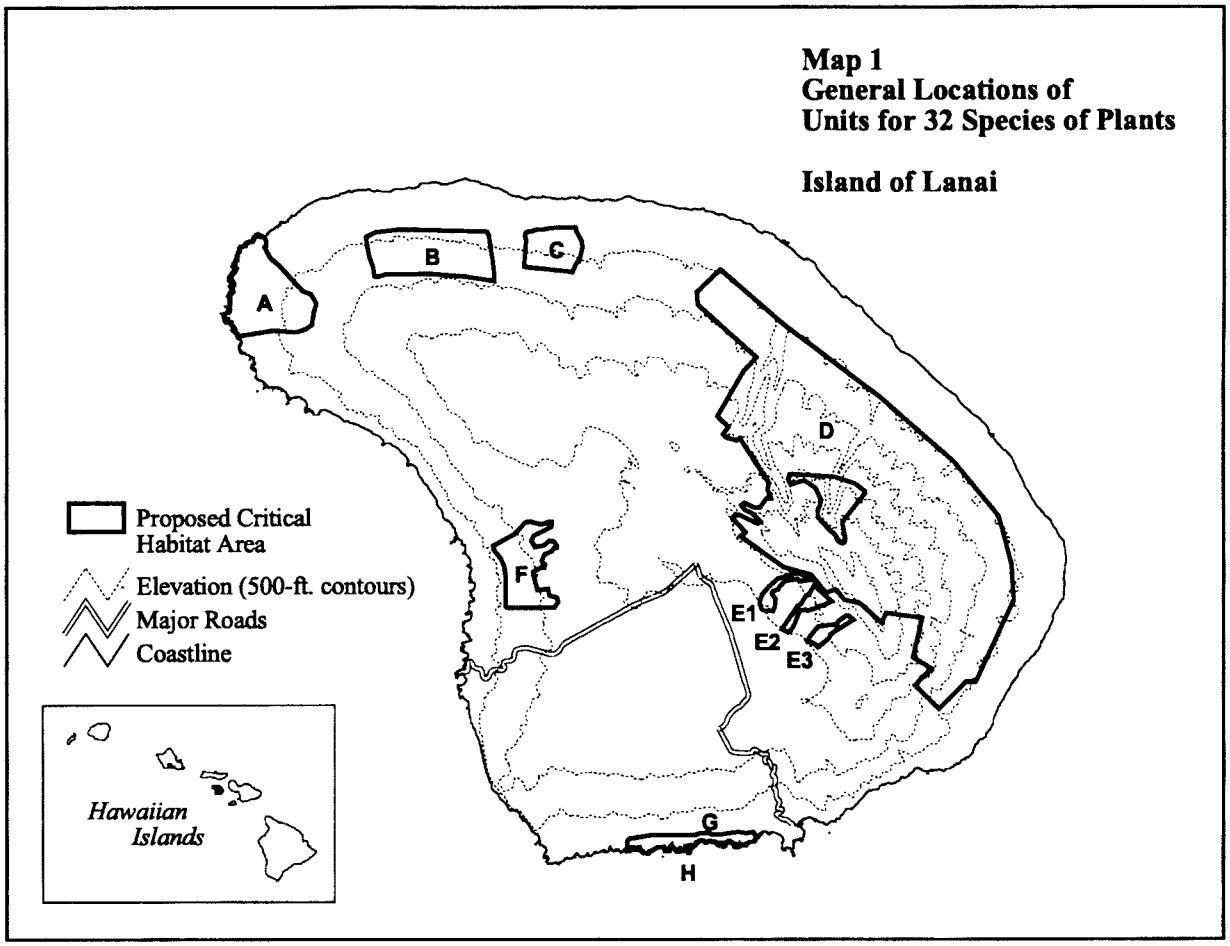
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing man-made features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraph (a)(1)(ii)(E) of this section and therefore, are not included in the critical habitat designations.

* * * * *

(E) *Lanai.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the eight critical habitats units designated on the island of Lanai.

(*1*) **Note:** Map 1—Index map follows:

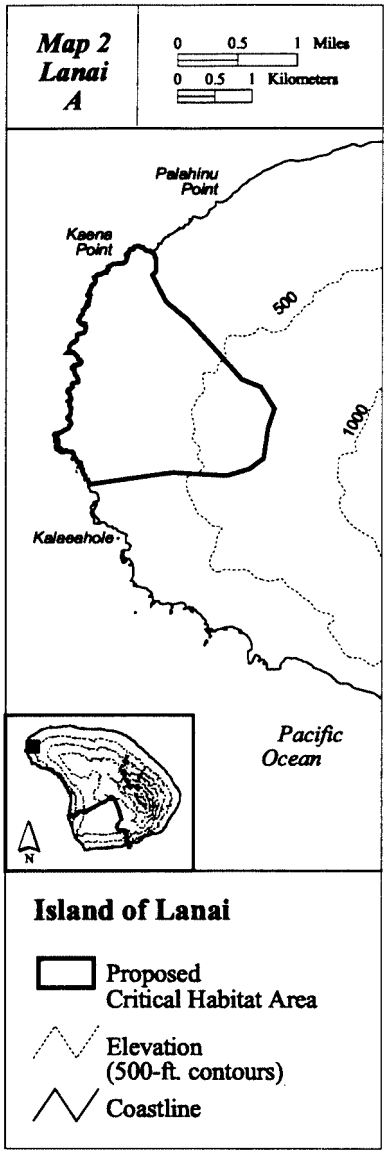


(*2*) Lanai A (574 ha; 1,418 ac).

(*i*) Unit consists of the following 17 boundary points and the intermediate coastline: 702882, 2313787; 702921, 2313674; 702928, 2313512; 702871, 2313459; 703058, 2313104; 703357, 2312863; 703811, 2312361; 704081, 2312052; 704342, 2311956; 704525, 2311656; 704439, 2311405; 704381,

2310990; 704197, 2310846; 703888, 2310749; 703155, 2310797; 702024, 2310634; 702882, 2313787.

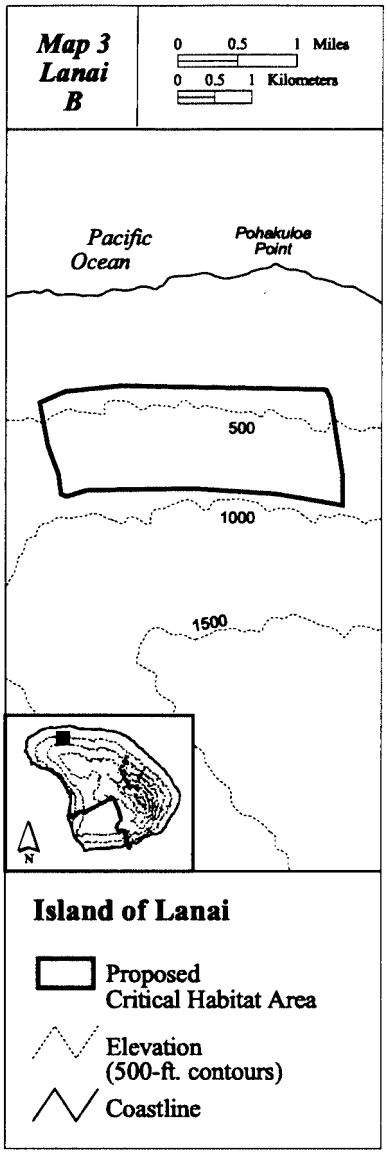
(*ii*) **Note:** Map 2 follows:



(*3*) Lanai B (551 ha; 1,363 ac).

(*i*) Unit consists of the following 15 boundary points: 706438, 2313925; 707201, 2314002; 709962, 2313947; 710017, 2313829; 710177, 2312823; 710191, 2312372; 709303, 2312524; 708179, 2312600; 706722, 2312579; 706452, 2312496; 706382, 2312524; 706348, 2312801; 706202, 2313190; 706091, 2313773; 706438, 2313925.

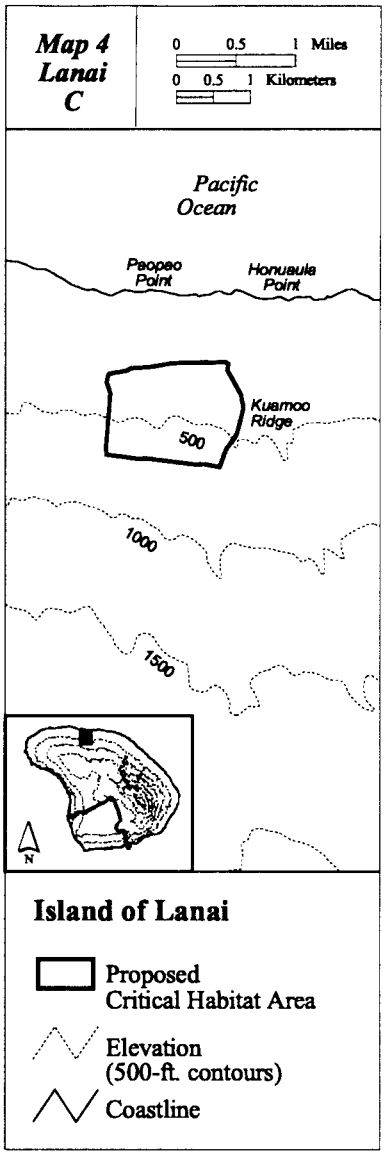
(*ii*) **Note:** Map 3 follows:



(*4*) Lanai C (222 ha; 549 ac).

(*i*) Unit consists of the following 22 boundary points: 711188, 2313923; 711429, 2313965; 711487, 2314003; 711749, 2314015; 712049, 2314065; 712768, 2314082; 712814, 2314057; 712797, 2313974; 712980, 2313641; 713013, 2313458; 712922, 2313100; 712777, 2312897; 712693, 2312660; 712477, 2312701; 712377, 2312693; 711683, 2312780; 711596, 2312768; 711159, 2312834; 711147, 2312926; 711209, 2313662; 711163, 2313815; 711188, 2313923.

(*ii*) **Note:** Map 4 follows:



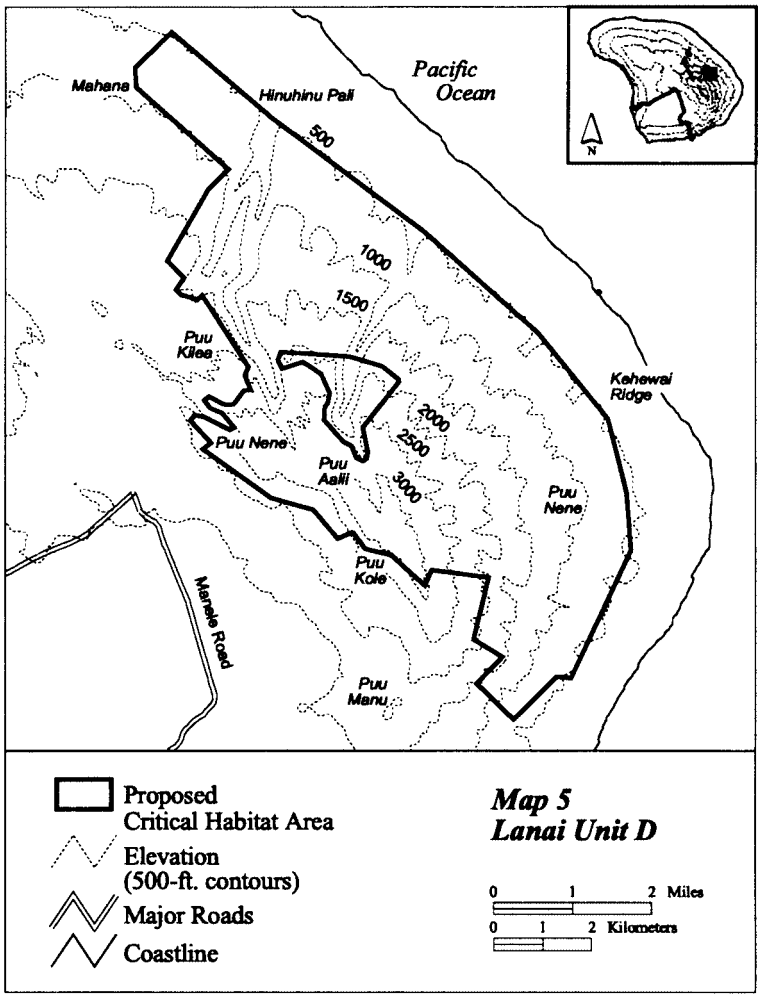
(*5*) Lanai D (5861 ha; 14,482 ac).

(*i*) Unit consists of the following 50 boundary points: 721080, 2302560; 720773, 2302431; 720277, 2303011; 719410, 2303246; 718032, 2304246; 718198, 2304371; 717783, 2304820; 717871, 2304936; 718055, 2304902; 718572, 2304638; 718670, 2304691; 718422, 2304982; 718181, 2305085; 718055, 2305246; 718157, 2305319; 718468, 2305154; 718652, 2305154; 718870, 2305453; 719006, 2305448; 718885, 2305755; 718957, 2305935; 718018, 2307384; 717926, 2307299; 717586, 2307403; 717484, 2307510; 717654, 2307744; 717302, 2308086; 718137, 2309521; 718547, 2309943; 716674, 2311623; 716648, 2312011; 717399, 2312731; 719438, 2310984; 722501, 2308704; 724829, 2306647; 726262, 2304867; 726648, 2303344; 726728, 2302198; 725517, 2299595; 725216, 2299615; 724348, 2298741; 723596, 2299480; 724115, 2300023; 723526, 2300379; 723832, 2301639;

722680, 2301793; 722544, 2301470; 721858, 2302099; 721339, 2302216; 721080, 2302560.

(*ii*) Excluding one area as follows: Bounded by the following 20 boundary points (218 ha; 539 ac): 722030, 2305656; 721281, 2304684; 721384, 2304179; 721361, 2304053; 721278, 2303995; 721137, 2304078; 721051, 2304305; 720895, 2304397; 720500, 2304833; 720511, 2305106; 720570, 2305199; 720608, 2305397; 720431, 2305786; 720064, 2306027; 719647, 2305891; 719553, 2306068; 719613, 2306239; 721002, 2306152; 721675, 2305940; 722030, 2305656.

(*iii*) **Note:** Map 5 follows:



(*6*) Lanai E1 (53 ha; 132 ac).

(*i*) Unit consists of the following 21 boundary points: 718727, 2301883; 718642, 2302092; 718720, 2302377; 718928, 2302637; 719228, 2302896; 719550, 2302974; 719799, 2303078; 719975, 2303021; 720193, 2302917; 720261, 2302858; 719948, 2302788; 719846, 2302865; 719474, 2302802; 719277, 2302635; 719253, 2302561; 719078, 2302494; 719042, 2302419; 719144, 2302231; 719136, 2302009; 719078, 2301859; 718727, 2301883.

(*ii*) **Note:** See Map 6.

(*7*) Lanai E2 (60 ha; 148 ac).

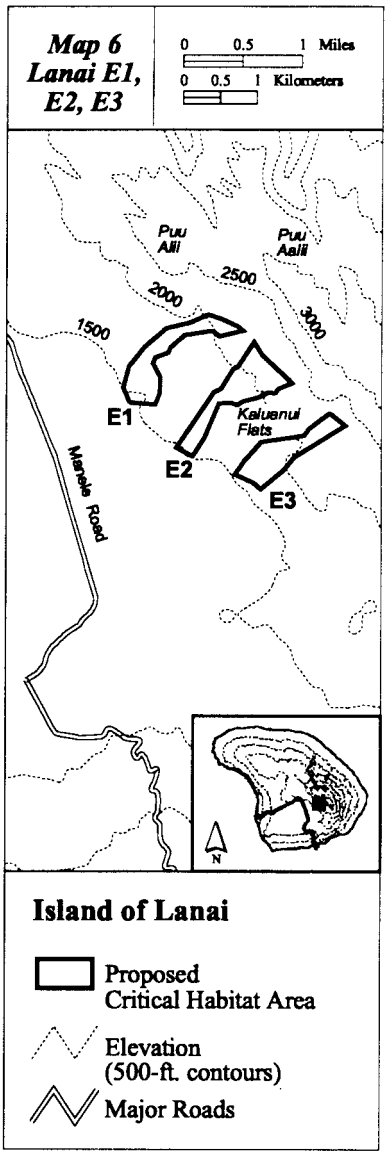
(*i*) Unit consists of the following 19 boundary points: 719586, 2301160; 719361, 2301274; 719868, 2302031; 719968, 2302070; 720134, 2302344; 720198, 2302369; 720411, 2302710; 720524, 2302530; 720933, 2302146; 720741, 2302073; 720699, 2302012; 720600, 2302026; 720464, 2301954; 720259, 2301901; 720187, 2301857; 720106, 2301890; 719937, 2301876; 719749, 2301413; 719586, 2301160.

(*ii*) **Note:** See Map 6.

(*8*) Lanai E3 (49 ha; 120 ac).

(*i*) Unit consists of the following 12 boundary points: 721435, 2301743; 721647, 2301574; 720952, 2301142; 720824, 2300969; 720507, 2300707; 720411, 2300796; 720164, 2300917; 720283, 2301104; 720513, 2301353; 721094, 2301439; 721161, 2301532; 721435, 2301743.

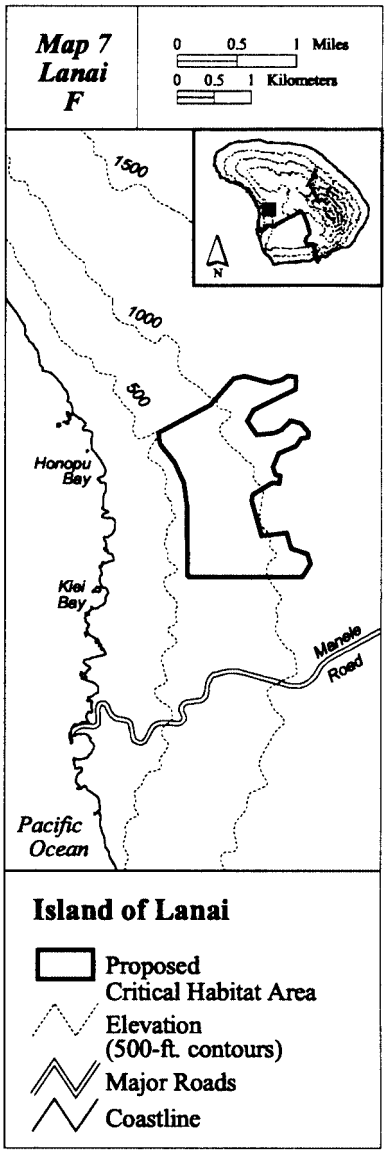
(*ii*) **Note:** Map 6 follows:



(*9*) Lanai F (331 ha; 818 ac).

(*i*) Unit consists of the following 41 boundary points: 710563, 2301975; 710554, 2302948; 710511, 2303264; 710389, 2303545; 710194, 2303783; 710165, 2303941; 710864, 2304323; 711181, 2304676; 711332, 2304712; 711678, 2304619; 711836, 2304655; 711905, 2304708; 712023, 2304705; 712031, 2304626; 712016, 2304532; 711452, 2304254; 711367, 2304099; 711491, 2303913; 711735, 2303942; 711836, 2303985; 711951, 2304107; 712084, 2304075; 712196, 2303949; 712190, 2303878; 712098, 2303861; 712028, 2303760; 711793, 2303659; 711717, 2303473; 711745, 2303370; 711818, 2303354; 711800, 2303250; 711710, 2303264; 711442, 2303104; 711423, 2303022; 711564, 2302535; 711901, 2302580; 711959, 2302361; 712182, 2302292; 712225, 2302156; 712115, 2301973; 710563, 2301975.

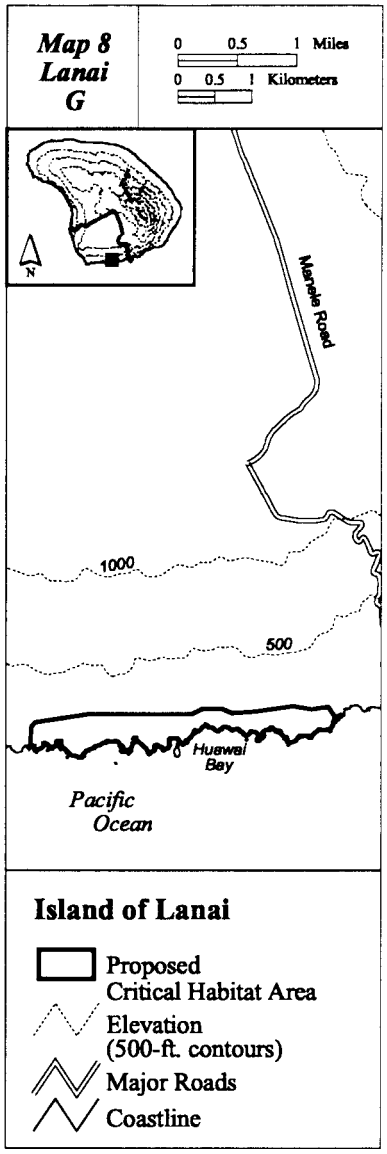
(*ii*) **Note:** Map 7 follows:



(*10*) Lanai G (151 ha; 373 ac).

(*i*) Unit consists of the following 16 boundary points and the intermediate coastline: 714418, 2294529; 714470, 2294599; 715200, 2294703; 716591, 2294709; 716742, 2294778; 716997, 2294784; 717130, 2294726; 717425, 2294738; 717964, 2294819; 718219, 2294773; 718433, 2294804; 718534, 2294660; 718604, 2294694; 718611, 2294686; 714408, 2294259; 714418, 2294529.

(*ii*) **Note:** Map 8 follows:



(*11*) Lanai H (1 ha; 2 ac).

(*i*) Unit consists of the entire offshore island, located at: 716393, 2294216.

(*ii*) **Note:** Map 9 follows:

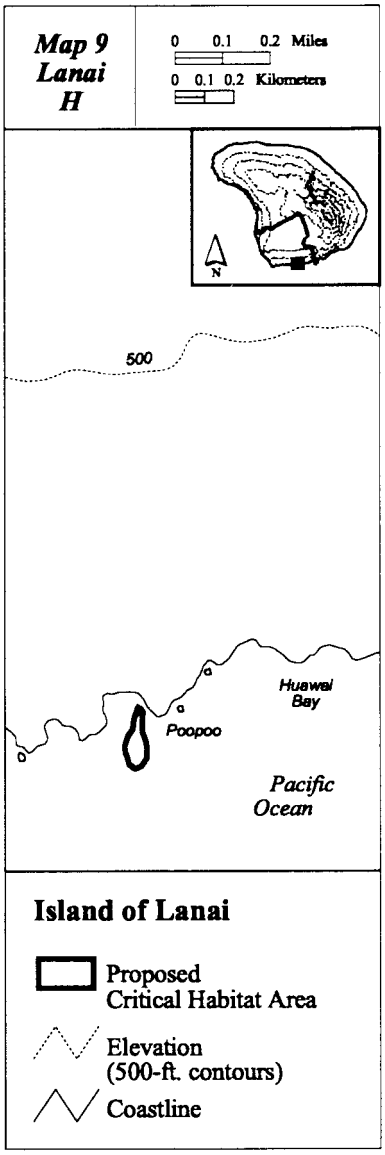


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TABLE (A)(1)(I)(E).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species occupied	Species unoccupied
Lanai A	*Hibiscus brackenridgei*	*Cyperus trachysanthos*.
Lanai B	*Tetramolopium remyi*.	
Lanai C		*Sesbania tomentosa*.
Lanai D	*Abutilon eremitopetalum*, *Bonamia menziesii*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp *grimesiana*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyrtandra munroi*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Hibiscus brackenridgei*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, *Spermolepis hawaiiense*, *Tetramolopium remyi*, and *Viola lanaiensis*.	*Adenophorus periens*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Cyanea lobata*, *Diellia erecta*, *Diplazium molokaiensis*, *Hesperomannia arborescens*, *Isodendrion pyrifolium*, *Neraudia sericea*, *Solanum incompletum*, and *Vigna o-wahuensis*.
Lanai E		*Bidens micrantha* ssp. *kalealaha*.
Lanai F		*Hibiscus brackenridgei*.
Lanai G		*Portulaca sclerocarpa*.
Lanai H	*Portulaca sclerocarpa*.	

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Spermolepis hawaiiensis* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis*, or shrublands dominated by *Dodonaea viscosa*, with one or more of the following native plant species: *Nestegis sandwicensis*, *Nesoluma polynesicum*, *Psydrax odorata*, or *Rauvolfia sandwicensis*; and

(*2*) Elevations between 402 and 711 m (1,319 and 2,332 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Lanai E, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Bidens micrantha* ssp. *kalealaha* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in dry *Dodonaea viscosa* shrubland; and

(*2*) Elevations between 409 and 771 m (1,342 and 2,529 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hesperomannia arborescens* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes or ridges in lowland mesic or wet forest containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Myrsine sandwicensis*, *Isachne distichophylla*, *Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp., *Dicranopteris linearis*, *Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp., *Cheirodendron* spp., or *Freycinetia arborea*; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Lanai B and D, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Tetramolopium remyi* on Lanai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Red, sandy, loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities with one or more of the following associated native species: *Bidens mauiensis*, *Waltheria indica*, *Wikstroemia oahuensis*, or *Lipochaeta lavarum*; and

(*2*) Elevations between 65 and 485 m (213 and 1,591 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Brighamia rockii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sparsely vegetated ledges of steep, rocky, dry cliffs, with native grasses, sedges, herbs or shrubs; and

(*2*) Elevations between 119 and 756 m (390 and 2,480 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha wai)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch bottoms in mesic forests; and

(*2*) Elevations between 700 and 1,032 m (2,296 and 3,385 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, or rocky or steep slopes of stream banks, with one or more of the following associated native plants: *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., or *Xylosma* spp.; and

(*2*) Elevations between 667 and 1,032 m (2,188 and 3,385 ft).

Family Campanulaceae: *Cyanea lobata* (haha)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyanea lobata* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulches in mesic to wet forest and shrubland containing one or more of the following associated native plant species: *Freycinetia arborea*, *Touchardia latifolia*, *Morinda trimera*, *Metrosideros polymorpha*, *Clermontia kakeana*, *Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus*, *Peperomia* spp., *Touchardia latifolia*, *Freycinetia arborea*, *Pleomele* spp., or *Athyrium* spp.; and

(*2*) Elevations between 664 and 1,032 m (2,178 and 3,385 ft).

Family Campanulaceae: *Cyanea macrostegia* ssp. *gibsonii* (haha)

Lanai D, identified in (a)(1)(i)(E), constitutes critical habitat for *Cyanea macrostegia* ssp. *gibsonii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Flat to moderate or steep slopes, on lower gulch slopes or gulch bottoms, at edges of streambanks in lowland wet *Metrosideros polymorpha* forest or *Diplopterygium pinnatum-Metrosideros polymorpha* shrubland with one or more of the following associated native plants: *Dicranopteris linearis*, *Perrottetia sandwicensis*, *Scaevola chamissoniana*, *Pipturus albidus*, *Antidesma platyphyllum*, *Cheirodendron trigynum*, *Freycinetia arborea*, *Psychotria* spp., *Cyrtandra* spp., *Broussaisia arguta*, *Clermontia* spp., *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Labordia* spp., *Melicope* spp., *Pneumatopteris sandwicensis*, or *Sadleria* spp.; and

(*2*) Elevations between 738 and 1,032 m (2,421 and 3,385 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Lanai D identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Bonamia menziesii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry *Nestegis sandwicensis-Diospyros* spp. forest or dry *Dodonea viscosa* shrubland with one or more of the following associated native plants: *Bobea* spp., *Nesoluma polynesicum*, *Erythrina sandwicensis*, *Rauvolfia sandwicensis*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dienella sandwicensis*, *Diospyros sandwicensis*, *Hedyotis terminalis*, *Melicope* spp., *Myoporum sandwicense*, *Nestegis sandwicense*, *Pisonia* spp., *Pittosporum*

spp., *Pouteria sandwicensis*, or *Sapindus oahuensis*; and

(*2*) Elevations between 315 and 885 m (1,033 and 2,903 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Lanai A, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyperus trachysanthos* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* grassland with *Hibiscus tiliaceus*; and

(*2*) Elevations between 0 and 46 m (0 and 151 ft).

Family Cyperaceae: *Gahnia lanaiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Gahnia lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Flat to gentle ridgecrests in moist to wet clay in open areas or in moderate shade within lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland with one or more of the following associated native species: mat ferns, *Doodia* spp., *Odontosoria chinensis*, *Ilex anomala*, *Hedyotis terminalis*, *Sadleria* spp., *Coprosma* spp., *Lycopodium* spp., *Scaevola* spp., or *Styphelia tameiameiae*; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Lanai C, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Sesbania tomentosa* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs with one or more of the following associated native plant species: *Chamaesyce celastroides*, *Cluscuta sandwichiana*, *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, *Vitex rotundifolia* or *Waltheria indica*; and

(*2*) Elevations between 44 and 221 m (144 and 725 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Lanai D, identified in the legal descriptions in (a)(1)(i)(E), constitutes critical habitat for *Vigna o-wahuensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest; and

(*2*) Elevations between 98 and 622 m (321 and 2,040 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Centaurium sebaeoides* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The dry ledges which may or may not contain *Hibiscus brackenridgei;* and

(*2*) Elevations between 39 and 331 m (128 and 1,086 ft).

Family Gesneriaceae: *Cyrtandra munroi* (haiwale)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyrtandra munroi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops in rich, diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *Metrosiderospolymorpha* forest, with one or more of the following native plant species: *Diospyros sandwicensis*, *Bobea elatior*, *Myrsine lessertiana*, *Pipturus albidus*, *Pittosporum confertiflorum*, *Pleomele fernaldii*, *Sadleria cyatheoides*, *Scaevola chamissoniana*, *Xylosma hawaiiense*, *Cyrtandra grayii*, *Cyrtandra grayana Diplopterygium pinnatum*, *Hedyotis acuminata*, *Clermontia* spp., *Alyxia oliviformis*, *Coprosma* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Melicope* spp., *Perrottetia sandwicensis*, *Pouteria sandwicensis*, or *Psychotria* spp.; and

(*2*) Elevations between 667 and 1,016 m (2,188 and 3,332 ft).

Family Loganiaceae: *Labordia tinifolia* var. *lanaiensis* (kamakahala)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Labordia tinifolia* var. *lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in lowland mesic forest with one or more of the following associated native plant species: *Diospyros sandwicensis*, *Bobea elatior*, *Myrsine lessertiana*, *Pipturus albidus*, *Pittosporum confertiflorum*, *Pleomele fernaldii*, *Sadleria cyatheoides*, *Scaevola chamissoniana*, *Xylosma hawaiiense*, *Cyrtandra grayii*, *Cyrtandra grayana*, *Diplopterygium pinnatum*, *Hedyotis acuminata*, *Clermontia* spp., *Alyxia oliviformis*, *Coprosma* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Melicope* spp., *Perrottetia sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Dicranopteris linearis*, or *Scaevola chamissoniana*; and

(*2*) Elevations between 558 and 1,013 m (1,830 and 3,323 ft).

Family Malvaceae: *Abutilon eremitopetalum* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Abutilon eremitopetalum* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open lowland dry *Erythrina sandwicensis* or *Diospyros ferrea* forest on moderately steep north-facing slopes on red sandy soil and rock with one or more of the following native plant species: *Psydrax odorata*, *Dodonaea viscosa*, *Nesoluma polynesicum*, *Rauvolfia sandwicensis*, *Sida fallax*, or *Wikstroemia* spp.; and

(*2*) Elevations between 108 and 660 m (354 and 2,165 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Lanai A, D and F, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Hibiscus brackenridgei* on Lanai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lowland dry to mesic forest and shrubland with one or more of the following associated native plant species: *Dodonea viscosa*, *Psydrax odorata*, *Eurya sandwicensis*, *Isachne distichophylla*, or *Sida fallax*; and

(*2*) Elevations between 0 and 645 m (0 and 2,116 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano (= sandbur, agrimony))

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cenchrus agrimonioides* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in mesic *Metrosideros polymorpha* forest and shrubland; and

(*2*) Elevations between 583 and 878 m (1,912 and 2,880 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (poe)

Lanai G and H, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Portulaca sclerocarpa* on Lanai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Exposed ledges in thin soil in coastal communities; and

(*2*) At elevations between 0 and 82 m (0 and 269 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hedyotis mannii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dark, narrow, rocky gulch walls and steep stream banks in wet forests with one or more of the following associated native plant species: *Thelypteris sandwicensis*, *Sadleria* spp., *Cyrtandra grayii, Scaevola chamissoniana*, *Freycinetia arborea*, or *Carex meyenii*; and

(*2*) Elevations between 711 and 1,032 m (2,332 and 3,385 ft).

Family Rubiaceae: *Hedyotis schlechtendahliana* var. *remyi* (kopa)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hedyotis schlechtendahliana* var. *remyi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Ridge crests in mesic windswept shrubland with a mixture of dominant plant taxa that may include *Metrosideros polymorpha*, *Dicranopteris linearis*, or *Styphelia tameiameiae* with one or more of the following associated native plant species: *Dodonaea viscosa*, *Odontosoria chinensis*, *Sadleria* spp., *Dubautia* spp., or *Myrsine* spp.; and

(*2*) Elevations between 558 and 1,032 m (1,830 and 3,385 ft).

Family Rutaceae: *Melicope munroi* (alani)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Melicope munroi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in lowland wet shrublands with one or more of the following associated native plant species: *Diplopterygium pinnatum*, *Dicranopteris linearis*, *Metrosideros polymorpha*, *Cheirodendron trigynum*, *Coprosma* spp., *Broussaisia arguta*, other *Melicope* spp., or *Machaerina angustifolia*; and

(*2*) Elevations between 701 and 1,032 m (2,299 and 3,385 ft).

Family Solanaceae: *Solanum incompletum* (popolo ku mai)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Solanum incompletum* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland with one or more of the following associated native plant species: *Heteropogon contortus*, *Lipochaeta* spp., or *Wikstroemia oahuensis*; and

(*2*) Elevations between 151 and 372 m (495 and 1,220 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Neraudia sericea* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat for *Neraudia sericea* are the habitat components provided by:

(*1*) Gulch slopes or gulch bottoms in dry-mesic or mesic forest containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Nestegis sandwicensis*, or *Dodonaea viscosa*; and

(*2*) Elevations between 693 and 869 m (2,273 and 2,850 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Isodendrion pyrifolium* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry shrubland with one or more of the following associated native plant species: *Dodonaea viscosa*, *Lipochaeta* spp., *Heteropogon contortus*, or *Wikstroemia oahuensis*; and

(*2*) Elevations between 132 and 574 m (433 and 1,883 ft).

Family Violaceae: *Viola lanaiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Viola lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and decomposed rock substrate in open to shaded areas on moderate to steep slopes from lower gulches to ridgetops in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland with one or more of the following associated native plants: ferns and short windswept shrubs, *Scaevola chamissoniana*, *Hedyotis terminalis*, *Hedyotis centranthoides*, *Styphelia tameiameiae*, *Carex* spp., *Ilex anomala*, *Psychotria* spp., *Antidesma* spp., *Coprosma* spp., *Freycinetia arborea*, *Myrsine* spp., *Nestegis* spp., *Psychotria* spp., or *Xylosma* spp.; and

(*2*) Elevations between 639 and 1,032 m (2,096 and 3,385 ft).

(B) Ferns and Allies.

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Ctenitis squamigera* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forest understory in diverse mesic forest and scrubby mixed mesic forest with one or more of the following native plant species: *Nestegis sandwicensis*, *Coprosma* spp., *Sadleria* spp., *Selaginella* spp., *Carex meyenii*, *Blechnum occidentale*, *Pipturus* spp., *Melicope* spp., *Pneumatopteris sandwicensis*, *Pittosporum* spp., *Alyxia oliviformis*, *Freycinetia arborea*, *Antidesma* spp., *Cyrtandra* spp., *Peperomia* spp., *Myrsine* spp., *Psychotria* spp., *Metrosideros polymorpha*, *Syzygium sandwicensis*, *Wikstroemia* spp., *Microlepia* spp., *Doodia* spp., *Boehmeria grandis*, *Nephrolepis* spp., *Perrottetia sandwicensis*, or *Xylosma* spp.; and

(*2*) Elevations between 640 and 944 m (2,099 and 3,096 ft).

Family Aspleniaceae: *Diellia erecta* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Diellia erecta* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Pisonia* spp. forest with one or more native grasses or ferns; and

(*2*) Elevations between 651 and 955 m (2,135 and 3,132 ft).

Family Aspleniaceae: Diplazium molokaiense (asplenium-leaved asplenium)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Diplazium molokaiense* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shady, damp places in wet forests; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Grammitidaceae: Adenophorus periens (pendant kihi fern)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Adenophorus periens* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Riparian banks of streams in well-developed, closed canopy areas of deep shade or high humidity in *Metrosideros polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest with one or more of the following associated native plant species: *Machaerina angustifolia, Cheirodendron trigynum, Sadleria* spp., *Clermontia* spp., *Psychotria* spp., *Melicope* spp., *Freycinetia arborea, Broussaisia arguta, Syzygium sandwicensis,* or *Hedyotis terminalis;* and

(*2*) Elevations between 763 and 1,032 m (2,503 and 3,385 ft).

Dated: February 19, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–4335 Filed 3–1–02; 8:45 am]

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Federal Register

Monday,
March 4, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Lanai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designations of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 32 of the 37 species listed under the Endangered Species Act, known historically from the island of Lanai within 8 critical habitat units totaling approximately 7,853 hectares (ha) (19,405 acres (ac)) on the island of Lanai.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until May 3, 2002. Public hearing requests must be received by April 18, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The 32 species for which we propose critical habitat are *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* Critical habitat is not proposed for 4 (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum, and Zanthoxylum hawaiiense*) of the 37 species which no longer occur on the island of Lanai, and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai. Prudency determinations for these species were contained in previous proposals published in the **Federal Register** on November 7, 2000, December 18, 2000, December 27, 2000, December 29, 2000, and January 28, 2002. Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis,* for which we determined that critical habitat designation is not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known.

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 37 plant species that, at the time of listing, were reported from the island of Lanai (Table 1). Seven of these species are endemic to the island of Lanai, while 30 species are reported from one or more other islands, as well as Lanai. Each of these species is described in more detail below in the section, ''Discussion of Plant Taxa.''

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW. Isles, Kahoolawe Niihau
Abutilon eremitopetalum (NCN*)	.....	.....	.....	C	.....	.....	
Adenophorus periens (pendant kihi fern)	C	H	C	R	R	C	
Bidens micrantha ssp. *kalealaha* (kookoolau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano, sandbur, agrimony).		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia oblongifolia ssp. *mauiensis* (oha wai)				C	C		
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea lobata (haha)				H	C		
Cyanea macrostegia ssp. *gibsonii* (NCN)				C			
Cyperus trachysanthos (puukaa)	C	C	H	H			Ni (C)
Cyrtandra munroi (haiwale)				C	C		
Diellia erecta (NCN)	C	C	C	H	C	C	

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW. Isles, Kahoolawe Niihau
Diplazium molokaiense (asplenium-leaved asplenium).	H	H	H	H	C		
Gahnia lanaiensis (NCN)				C			
Hedyotis mannii (pilo)			C	C	C		
Hedyotis schlechtendahliana var. *remyi* (kopa)				C			
Hesperomannia arborescens (NCN)		C	C	H	C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H)
Labordia tinifolia var. *lanaiensis* (kamakahala)				C			
Mariscus fauriei (NCN)			C	H		C	
Melicope munroi (alani)			H	C			
Neraudia sericea (NCN)			C	H	C		Ka (H)
Phyllostegia glabra var. *lanaiensis* (NCN)				H			
Portulaca sclerocarpa (poe)				C		C	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), ka (C), NW Isles (C)
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium lepidotum ssp. *lepidotum* (NCN)		C		H			
Tetramolopium remyi (NCN)				C	H		
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Viola lanaiensis (NCN)				C			
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* NCN—No Common Name.

We determined that designation of critical habitat was prudent for six plants from the island of Lanai on December 27, 2000 (65 FR 82086). These species are: *Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis.* In proposals published on November 7, 2000 (65 FR 66808), and December 18, 2000 (65 FR 79192), we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai, Niihau, Maui, or Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999 (64 FR 48307), we determined that designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 66808, 65 FR 79192).

In the December 27, 2000, proposal we determined that critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Lanai, because it had not been seen in the wild on Lanai since 1914 and no viable genetic material of this species is known to exist. Therefore, such designation would not be beneficial to this species. No change is made here to the December 27, 2000, not prudent determination for *Phyllostegia glabra* var. *lanaiensis* and it is hereby incorporated by reference (65 FR 82086).

In the December 27, 2000, proposal we proposed designation of critical habitat for 18 plants from the island of Lanai. These species are: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi,* and *Viola lanaiensis.* In this proposal we have revised the proposed designations for these 18 plants based on new information and to address comments received during the comment periods on the December 27, 2000, proposal.

In the December 27, 2000, proposal we did not propose designation of critical habitat for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus faurei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (Kauai), December 18, 2000 (Maui and Kahoolawe), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these 16 species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, and 67 FR 3940). In this proposal, we propose designation of critical habitat

for *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Sesbania tomentosa,* and *Solanum incompletum* on the island of Lanai, based on new information, including information received during the comment periods on the December 27, 2000, proposal. Critical habitat is not proposed for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* on the island of Lanai because these plants no longer occur on Lanai and we are unable to determine habitat which is essential to their conservation on this island. However, proposed critical habitat designations for these species may be included in other future Hawaiian plants proposed critical habitat rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DECISIONS WILL BE MADE FOR FOUR SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT WHICH IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLAND OF LANAI

Species	Proposed rules in which critical habitat designations will be made
Mariscus fauriei	Molokai, Hawaii.
Silene lanceolata	Molokai, Hawaii, and Oahu.
Tetramolopium lepidotum ssp. lepidotum	Oahu.
Zanthoxylum hawaiiense	Kauai, Maui, Molokai, and Hawaii.

In this proposal, we determine that critical habitat is prudent for one species (*Tetramolopium lepidotum* ssp. *lepidotum*) for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). This plant was listed as endangered under the Endangered Species Act of 1973, as amended (Act) in 1991. At the time this plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to this species and would not benefit the plant. We determine that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum* because we now believe that such designation would be beneficial to this species. Critical habitat is not proposed at this time for *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai because the species no longer occurs on Lanai and we are unable to determine habitat which is essential to its conservation on this island. However, proposed critical habitat designation, or non-designation, for this species will be included in other future Hawaiian plants proposed critical habitat rules (Table 2).

Critical habitat for 32 of the 37 species from the island of Lanai is proposed at this time. These species are: *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* Critical habitat is not proposed for four of the 37 species (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense*) which no longer occur on the island of Lanai, and for which we are unable to determine any habitat that is essential to their conservation on the island of Lanai. However, proposed critical habitat designations for these species may be included in other future Hawaiian plants proposed critical habitat rules (Table 2). Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis* for which we determined, on December 27, 2000, that critical habitat designation is not prudent because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist. No change is made to this prudency determination here, and it is hereby incorporated by reference (65 FR 82086).

The Island of Lanai

Lanai is a small island totaling about 360 square kilometers (sq km) (139 square miles (sq mi)) in area. Hidden from the trade winds in the lee or rain shadow of the more massive West Maui Mountains, Lanai was formed from a single shield volcano built by eruptions at its summit and along three rift zones. The principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 1,027 meters (m) (3,370 feet (ft)). The entire ridge is commonly called Lanaihale, after its highest point. Annual rainfall on the summit of Lanaihale is 760 to 1,015 millimeters (mm) (30 to 40 inches (in)), but is considerably less, 250 to 500 mm (10 to 20 in), over much of the rest of the island (Department of Geography 1998).

Geologically, Lanai is part of the four island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui (Greater Maui). During the last Ice Age about 12,000 years ago when sea levels were about 160 m (525 ft) less than their present level, these four islands were connected by a broad lowland plain. This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota (Department of Geography 1998).

Changes in Lanai's ecosystem began with the arrival of the first Polynesians about 1,500 years ago. In the 1800s, goats (*Capra hircus*) and sheep (*Ovis aries*) were first introduced to the island. Native vegetation was soon decimated by these non-native ungulates, and erosion from wind and rain caused further damage to the native forests. Formal ranching was begun in 1902, and by 1910, the Territory forester helped to revegetate the island. By 1911, a ranch manager from New Zealand, George Munro, instituted a forest management practice to recover the native forests and bird species which included fencing and eradication of sheep and goats from the mountains. By the 1920s, Castle and Cooke had acquired more than 98 percent of the island and established a 6,500 ha (16,000 ac) pineapple plantation

surrounding its company town, Lanai City. In the early 1990s, the pineapple plantation closed, and luxury hotels were developed by the private landowner, sustaining the island's economy today (Hobdy 1993).

There are no military installations on the island of Lanai.

Discussion of Plant Taxa

Species Endemic to Lanai

Abutilon eremitopetalum (NCN)

Abutilon eremitopetalum is a long-lived shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, and heart-shaped leaves. It is the only *Abutilon* on Lanai whose flowers have green petals hidden within the calyx (the outside leaf-like part of the flower) (Bates 1999).

Abutilon eremitopetalum is known to flower during February. Little else is known about the life history of *Abutilon eremitopetalum.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies in the ahupuaa (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai. Currently, about seven individuals are known from a single population on privately owned land in Kahea Gulch on the northeastern part of the island (Caum 1933; Hawaii Natural Heritage Program (HINHP) Database 2000; Service 1995; Geographic Decision Systems International (GDSI) 2000).

Abutilon eremitopetalum is found in lowland dry forest at elevations between 108 and 660 m (354 and 2,165 ft), on a moderately steep north-facing slope on red sandy soil and rock. *Erythrina sandwicensis* (wili wili) and *Diospyros sandwichensis* (lama) are the dominant trees in open forest of the area. Other associated native species include *Psydrax odoratum* (alahee), *Dodonaea viscosa* (aalii), *Nesoluma polynesicum* (keahi), *Rauvolfia sandwicensis* (hao), *Sida fallax* (ilima), and *Wikstroemia* sp. (akia) (Service 1995; HINHP Database 2000).

The threats to *Abutilon eremitopetalum* are habitat degradation and competition by encroaching alien plant species such as *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush); browsing by axis deer (*Axis axis*); soil erosion caused by feral ungulate grazing on grasses and forbs; and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population. Fire is another potential threat because the area is dry much of the year (HINHP Database 2000; 56 FR 47686; Service 1995).

Cyanea macrostegia ssp. gibsonii (NCN)

Cyanea macrostegia ssp. *gibsonii,* a long-lived perennial and a member of the bellflower family (Campanulaceae), is a palm-like tree 1 to 7 m (3 to 23 ft) tall with elliptic or oblong leaves that have fine hairs covering the lower surface. The following combination of characters separates this taxon from the other members of the genus on Lanai: calyx lobes are oblong, narrowly oblong, or ovate in shape; and the calyx and corolla (petals of a flower) are both more than 0.5 centimeters (cm) (0.2 in) wide (Lammers 1999; 56 FR 47686).

Limited observations suggest *Cyanea macrostegia* ssp. *gibsonii* flowers during the month of July. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyanea macrostegia ssp. *gibsonii* has been is documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai. There are currently only two populations containing 74 individuals. One population is located north of Lanaihale and the second population is north of Puu aalii on privately owned land (Lammers 1999; 56 FR 47686; GDSI 2000; HINHP Database 2000).

The habitat of *Cyanea macrostegia* ssp. *gibsonii* is lowland wet *Metrosideros polymorpha* (ohia) forest or *Diplopterygium pinnatum* (uluhe lau nui)-*Metrosideros polymorpha* shrubland between elevations of 738 and 1,032 m (2,421 and 3,385 ft). It has been observed to grow on flat to moderate or steep slopes, usually on lower gulch slopes or gulch bottoms, often at edges of streambanks, probably due to vulnerability to ungulate damage at more accessible locations. Associated vegetation includes *Dicranopteris linearis* (uluhe), *Perrottetia sandwicensis* (olomea), *Scaevola chamissoniana* (naupaka kuahiwi), *Pipturus albidus* (mamaki), *Antidesma platyphyllum* (hame), *Cheirodendron trigynum* (olapa), *Freycinetia arborea* (ieie), *Psychotria* sp. (kopiko), *Cyrtandra* sp. (haiwale), *Broussaisia arguta* (kanawao), *Clermontia* sp. (oha wai), *Dubautia* sp. (naenae), *Hedyotis* sp. (NCN), *Ilex anomala* (kawau), *Labordia* sp. (kamakahala), *Melicope* sp. (alani), *Pneumatopteris sandwicensis* (NCN), and *Sadleria* sp. (amau) (Service 1995; HINHP Database 2000; Joel Lau, Hawaii Natural Heritage Program, pers. comm., 2001).

The threats to *Cyanea macrostegia* ssp. *gibsonii* are browsing by deer; competition with the alien plant *Hedychium gardnerianum* (kahili ginger); and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the existing populations (HINHP Database 2000; Service 1995; 56 FR 47686).

Gahnia lanaiensis (NCN)

Gahnia lanaiensis, a short-lived perennial and a member of the sedge family (Cyperaceae), is a tall (1.5 to 3 m (5 to 10 ft)), tufted, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 0.36 to 0.46 cm (0.14 to 0.18 in) long and purplish-black when mature (Koyama 1999).

July has been described as the ''end of the flowering season'' for *Gahnia lanaiensis.* Plants of this species have been observed with fruit in October. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Degener *et al.,* 1964; 56 FR 47686).

Gahnia lanaiensis is known from one population containing 47 individuals on privately owned land along the summit of Lanaihale in the Haalelepaakai area and on the eastern edge of Hauola Gulch. The population is found between 915 and 1,030 m (3,000 and 3,380 ft) in elevation. This distribution encompasses the entire known historic range of the species (GDSI 2000; HINHP Database 2000).

The habitat of *Gahnia lanaiensis* is lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland at elevations between 737 and 1,032 m (2,417 and 3,385 ft). It occurs on flat to gentle ridgecrest topography in moist to wet clay or other soil substrate in open areas or in moderate shade. Associated species include native mat ferns, *Doodia* sp.

(okupukupu laulii), *Odontosoria chinensis* (palaa), *Ilex anomala* (kawau), *Hedyotis terminalis* (manono), *Sadleria* spp. (amau), *Coprosma* sp. (pilo), *Lycopodium* sp. (wawaeiole), *Scaevola* sp. (naupaka), and *Styphelia tameiameiae* (pukiawe) (Service 1995).

The primary threats to this species are the small number of plants and their restricted distribution, which increase the potential for extinction from naturally occurring events. In addition, *Gahnia lanaiensis* is threatened by habitat destruction resulting from the planned development of the island, and competition with *Leptospermum scoparium* (manuka), a weedy tree introduced from New Zealand, which is spreading along Lanaihale, but has not yet reached the area where *Gahnia* is found (Service 1995; HINHP Database 2000).

Hedyotis schlechtendahliana var. remyi (kopa)

Hedyotis schlechtendahliana var. *remyi,* a short-lived perennial and a member of the coffee family (Rubiaceae), is a few-branched subshrub from 60 to 600 cm (24 to 240 in) long, with weakly erect or climbing stems that may be somewhat square, smooth, and glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The species is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems, and the variety *remyi* is distinguished from *Hedyotis schlechtendahliana* var. *schlechtendahliana* by the leaf shape, presence of narrow flowering stalks, and flower color (Wagner *et al.,* 1999).

Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown for *Hedyotis schlechtendahliana* var. *remyi* (Service 2001).

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale. Currently, this species is known from eight individuals in two populations on privately owned land on Kaiholeha-Hulupoe Ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (64 FR 48307; GDSI 2000; HINHP Database 2000).

Hedyotis schlechtendahliana var. *remyi* typically grows on or near ridge crests in mesic windswept shrubland with a mixture of dominant plant species that may include *Metrosideros polymorpha, Dicranopteris linearis,* or *Styphelia tameiameiae* at elevations between 558 and 1,032 m (1,830 and 3,385 ft). Associated plant species include *Dodonaea viscosa, Odontosoria chinensis, Sadleria* spp., *Dubautia* spp., and *Myrsine* sp. (kolea) (HINHP Database 2000; 64 FR 48307).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and destruction by axis deer; competition with alien plant species, such as *Psidium cattleianum* (strawberry guava), *Myrica faya* (firetree), *Leptospermum scoparium,* and *Schinus terebinthifolius* (christmasberry); and random environmental events or reduced reproductive vigor due to the small number of remaining individuals and populations (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. lanaiensis (kamakahala)

Labordia tinifolia var. *lanaiensis,* a short-lived perennial in the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. This subspecies differs from the other species in this endemic Hawaiian genus by having larger capsules (a dry, generally many seeded fruit) and smaller corollas (petals, whorl of flower parts) (Wagner *et al.,* 1999).

Little is known about the life history of *Labordia tinifolia* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale. Currently, *Labordia tinifolia* var. *lanaiensis* is known from only one population on privately owned land at the southeastern end of the summit ridge of Lanaihale. This population totals 300 to 800 scattered individuals (HINHP Database 2000; GDSI 2000; Service 2001).

The typical habitat of *Labordia tinifolia* var. *lanaiensis* is gulch slopes in lowland mesic forest. Associated native species include *Diospyros sandwicensis, Bobea elatior* (ahakea launui), *Myrsine lessertiana* (kolea), *Pipturus albidus, Pittosporum confertiflorum* (hoawa), *Pleomele fernaldii* (hala pepe), *Sadleria cyatheoides, Scaevola chamissoniana, Xylosma hawaiiense* (maua), *Cyrtandra grayii* (haiwale) and *Cyrtandra grayana* (haiwale), *Diplopterygium pinnatum, Hedyotis acuminata* (au), *Clermontia* spp., *Alyxia oliviformis* (maile), *Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Melicope* spp., *Perrottetia sandwicensis, Pouteria sandwicensis* (alaa), and *Psychotria* spp., *Dicranopteris linearis,* and *Scaevola chamissoniana,* at elevations between 558 and 1,013 m (1,830 and 3,323 ft) (HINHP Database 2000; 64 FR 48307; Service 2001).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several alien plant species. The species is also threatened by random environmental factors because of the small population (64 FR 48307; Service 2001).

Phyllostegia glabra var. lanaiensis (NCN)

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent (reclining, with the end ascending), glabrous, short-lived perennial herb in the mint family (Lamiaceae). Its leaves are thin, narrow, lance-shaped, 8 to 24 cm (3.2 to 9.5 in) long and 1.6 to 2.5 cm (0.63 to 0.98 in) wide, often red-tinged or with red veins, and toothed at the edges. The flowers are in clusters of six to ten per leaf axil, mostly at the ends of branches. The flowers are white, occasionally tinged with purple, and are variable in size, about 1 to 2.5 cm (0.39 to 0.98 in) long. The fruit consists of four small, fleshy nutlets. This variety is very similar to *Phyllostegia glabra* var. *glabra;* it may be difficult to differentiate between the two species without flowers (Wagner *et al.,* 1999).

Little is known about the life history of *Phyllostegia glabra* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Phyllostegia glabra var. *lanaiensis* is known from only two collections from Lanai (one near Kaiholena) and was last collected in 1914 (two fertile specimens). A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (Robert Hobdy, DOFAW, pers. comm., 1992; Service 1995).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Nothing is known of the threats to *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Viola lanaiensis (NCN)

Viola lanaiensis, a short-lived perennial of the violet family (Violaceae), is a small, erect, unbranched or little-branched subshrub. The leaves, which are clustered toward the upper part of the stem, are lance-shaped with a pair of narrow,

membranous stipules (leaf-like appendages arising from the base of a leaf) below each leaf axis. The flowers are small and white with purple tinged or purple veins, and occur singly or up to four per upper leaf axil. The fruit is a capsule, about 1.0 to 1.3 cm (0.4 to 0.5 in) long. It is the only member of the genus on Lanai (Wagner *et al.,* 1999).

Little is known about the life history of *Viola lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Viola lanaiensis was known historically from scattered sites on the summit, ridges, and upper slopes of Lanaihale (from near the head of Kaiolena and Hookio Gulches to the vicinity of Haalelepaakai, a distance of about 4 km (2.5 mi), at elevations of approximately 850 to 975 m (2,790 to 3,200 ft). An occurrence of *V. lanaiensis* was known in the late 1970s along the summit road near the head of Waialala Gulch where a population of approximately 20 individuals flourished. That population has since disappeared due to habitat disturbance. Two populations are currently known from privately owned land on southern Lanai: in Kunoa Gulch; between Kunoa and Waialala Gulches; in the upper end of the northernmost drainage of Awehi Gulch; in Hauola Gulch; and along Hauola Trail. It is estimated that the populations total less than 500 plants (GDSI 2000; HINHP Database 2000).

The habitat of *Viola lanaiensis* is *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland. It has been observed on moderate to steep slopes from lower gulches to ridgetops, at elevations between 639 and 1,032 m (2,096 and 3,385 ft), with a soil and decomposed rock substrate in open to shaded areas. It was once observed growing from crevices in drier soil on a mostly open rock area near a recent landslide. Associated vegetation includes ferns and short windswept shrubs or other diverse mesic community members, such as *Scaevola chamissoniana, Hedyotis terminalis, Hedyotis centranthoides* (NCN), *Styphelia tameiameiae, Carex* sp. (NCN), *Ilex anomala, Psychotria* spp., *Antidesma* spp. (hame), *Coprosma* spp., *Freycinetia arborea, Myrsine* spp., *Nestegis* sp. (olopua), *Psychotria* spp., and Xylosma sp. (maua) (Service 1995; 56 FR 47686).

The main threats to *Viola lanaiensis* include browsing and habitat disturbance by axis deer; encroaching alien plant species, such as *Leptospermum* sp. (NCN); depressed reproductive vigor due to a limited local gene pool; the probable loss of appropriate pollinators; and predation by slugs (Midax gigetes) (Service 1995; 56 FR 47686).

Multi-Island Species

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground), and short-lived perennial fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet) margins, pinnae at right angles to the midrib axis, placement of the sori on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores may be dispersed by wind, water, or perhaps on the feet of birds or insects. Spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989; Service 1999).

Historically, *Adenophorus periens* was known from Kauai, Oahu, and the island of Hawaii, with undocumented reports from Lanai and Maui. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Lanai, it was last seen in the 1860s (59 FR 56333; GDSI 2000; HINHP Database 2000; Service 1999).

This species, an epiphyte (a plant that derives moisture and nutrients from the air and rain) usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 763 and 1,032 m (2,503 and 3,385 ft). Associated native plant species include *Machaerina angustifolia* (uki), *Cheirodendron trigynum, Sadleria* spp., *Clermontia* spp., *Psychotria* spp., *Melicope* spp., *Freycinetia arborea, Broussaisia arguta, Syzygium sandwicensis* (ohia ha), and *Hedyotis terminalis* (59 FR 56333; Linney 1989; Kennith Wood, National Tropical Botanical Garden, pers. comm., 2001; Service 1999).

Nothing is known of the threats to *Adenophorus periens* on the island of Lanai because the species was last seen there in the 1860s.

Bidens micrantha ssp. kalealaha (kookoolau)

Bidens micrantha ssp. *kalealaha,* a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens,* such as *B. mauiensis* and *B. menziesii,* and possibly *B. conjuncta.* Little else is known about the life history of *Bidens micrantha* ssp. *kalealaha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai and Maui. Currently, this taxon remains only on East Maui. It was last seen on Lanai in the 1960s (Ganders and Nagata 1999; HINHP Database 2000; Service 1997; 57 FR 20772; GDSI 2000; HINHP Database 2000).

The habitat of *Bidens micrantha* ssp. *kalealaha* is gulch slopes in dry *Dodonaea viscosa* shrubland at elevations between 409 and 771 m (1,342 and 2,529 ft) (J. Lau, pers. comm., 2001).

The threats to this species on Lanai included habitat destruction by feral goats, pigs, and deer; competition from a variety of alien plant species; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial and a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles (narrowed top of ovary), longer stems and petioles (a stalk that supports a leaf), and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Its flowering

cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and Hawaii. Currently, this species is known from Kauai, Oahu, Maui, Hawaii, and Lanai. On Lanai, the three populations, containing a total of 14 individual plants, are found on privately owned land in the Ahakea and Kanepuu Units of Kanepuu Preserve, and on Puhielelu Ridge (GDSI 2000; HINHP Database 2000).

Bonamia menziesii is found in dry *Nestegis sandwicensis-Diospyros* sp. (lama) forest and dry *Dodonea viscosa* shrubland at elevations between 315 and 885 m (1,033 and 2,903 ft). Associated species include *Bobea* sp. (ahakea), *Nesoluma polynesicum, Erythrina sandwicensis, Rauvolfia sandwicensis, Metrosideros polymorpha, Psydrax odoratum, Dienella sandwicensis* (uki uki), *Diospyros sandwicensis* (lama), *Hedyotis terminalis, Melicope* sp., *Myoporum sandwicense* (naio), *Nestegis sandwicensis* (olopua), *Pisonia* sp. (papala kepau), *Pittosporum* sp. (hoawa), *Pouteria sandwicensis,* and *Sapindus oahuensis* (lonomea) (HINHP Database 2000; 59 FR 56333).

The primary threats to this species on Lanai are habitat degradation and possible predation by feral pigs, goats, and axis deer; competition with a variety of alien plant species, such as *Lantana camara, Leucaena leucocephala* and *Schinus terebinthifolius;* and an alien beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: the reproductive system is protandrous, meaning there is a temporal separation between the production of male and female gametes, in this case a separation of several days; only 5 percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months. This species was observed in flower during August. Little else is known about the life history of *Brighamia rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2000; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Maui, and it was last seen on Lanai in 1911 (Lammers 1999; HINHP Database 2000; K. Wood, *in litt.* 2000; Service 1996b; 57 FR 46325). Currently, it is extant only on Molokai.

On Lanai, *Brighamia rockii* occurred on sparsely vegetated ledges of steep, rocky, dry cliffs, at elevations between 119 and 756 m (390 and 2,480 ft) with native grasses, sedges, herbs and shrubs (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Threats to *Brighamia rockii* on the island of Lanai included habitat destruction from deer and goats, and competition with alien plants (Service 1996b).

Cenchrus agrimonioides (kamanomano (= sandbur, agrimony))

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Lanai it was last seen in 1915 (Service 1999; 61 FR 53108; HINHP Database 2000).

Cenchrus agrimonioides var. *agrimonioides* was found on slopes in mesic *Metrosideros polymorpha* forest and shrubland at elevations between 583 and 878 m (1,912 and 2,880 ft) (Service 1999; 61 FR 53108; HINHP Database 2000; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Lanai included competition with alien plant species, and browsing and habitat degradation by goats and cattle (*Bos taurus*) (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.*, 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Centaurium sebaeoides was historically and is currently known from Kauai, Oahu, Molokai, Lanai, and Maui. On Lanai, there is one population containing between 20 and 30 individual plants in Maunalei Valley on privately owned land (HINHP Database 2000).

This species is found on dry ledges at elevations between 39 and 331 m (128 and 1,086 ft). Associated species include *Hibiscus brackenridgei* (HINHP Database 2000).

The major threats to this species on Lanai are competition from alien plant species, depressed reproductive vigor, and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (Service 1999; HINHP Database 2000).

Clermontia oblongifolia ssp. mauiensis (oha wai)

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while *Clermontia oblongifolia* ssp. *oblongifolia* is only known from Oahu, and *Clermontia oblongifolia* ssp. *brevipes* is only known from Molokai (Lammers 1988, 1999; 57 FR 20772).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *Clermontia oblongifolia* ssp. *mauiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; Rock 1919).

Clermontia oblongifolia ssp. *mauiensis* was historically and is currently known from Lanai and Maui. On Lanai, an unknown number of individuals are reported from Kaiholena Gulch on privately owned land (Lammers 1999; 57 FR 20772; HINHP Database 2000).

This plant typically grows in gulch bottoms in mesic forests at elevations between 700 and 1,032 m (2,296 and 3,385 ft) (HINHP Database 2000).

The threats to this species on Lanai are its vulnerability to extinction from a single natural or human-caused environmental disturbance; depressed reproductive vigor; and habitat degradation by feral pigs (57 FR 20772; Service 1997).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial and a member of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem), creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Maui, Lanai, and the island of Hawaii. Currently, it is found on Oahu, Lanai, Maui, and Molokai. On Lanai, there are two populations totaling 42 individual plants on privately owned land in the Waiapaa-Kapohaku area on the leeward side of the island, and in the Lopa and Waiopa Gulches on the windward side (59 FR 49025; GDSI 2000; HINHP Database 2000).

This species is found in the forest understory at elevations between 640 and 944 m (2,099 and 3,096 ft) in diverse mesic forest and scrubby mixed mesic forest (HINHP Database 2000). Associated native plant species include *Nestegis sandwicensis, Coprosma* spp., *Sadleria* spp., *Selaginella* sp. (lepelepe a moa), *Carex meyenii* (NCN), *Blechnum occidentale* (NCN), *Pipturus* spp., *Melicope* spp., *Pneumatopteris sandwicensis, Pittosporum* spp., *Alyxia oliviformis, Freycinetia arborea, Antidesma* spp., *Cyrtandra* spp., *Peperomia* sp. (ala ala wai nui), *Myrsine* spp., *Psychotria* spp., *Metrosideros polymorpha, Syzygium sandwicensis, Wikstroemia* spp., *Microlepia* sp. (NCN), *Doodia* spp., *Boehmeria grandis* (akolea), *Nephrolepis* sp. (kupukupu), *Perrotettia sandwicensis*, and *Xylosma* sp. (HINHP Database 2000, 59 FR 49025).

The primary threats to this species on Lanai are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant species, especially Psidium cattleianum and *Schinus terebinthifolius;* fire; decreased reproductive vigor; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a; Culliney 1988; HINHP Database 2000; 59 FR 49025).

Cyanea grimesiana ssp. grimesiana (haha)

Cyanea grimesiana ssp. *grimesiana*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Cyanea grimesiana ssp. *grimesiana* was historically and is currently known from Oahu, Molokai, Lanai, and Maui. Currently, on Lanai there are two populations with at least three individuals on privately owned land in Kaiholena Gulch and Waiakeakua Gulch (61 FR 53108; Service 1999; HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on rocky or steep slopes of stream banks, at elevations between 667 and 1,032 m (2,188 and 3,385 ft). Associated plants include *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., and *Xylosma* sp. (61 FR 53108; Service 1999).

The threats to this species on Lanai are habitat degradation and/or destruction caused by feral axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events causing extinction due to the small number of existing individuals; fire; landslides; and predation by rats (Rattus rattus) and various slugs (59 FR 53108; Service 1999).

Cyanea lobata (haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Degener 1936; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It was last seen on Lanai in 1934 (GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772).

This species occurs in gulches in mesic to wet forest and shrubland at elevations between 664 and 1,032 m (2,178 and 3,385 ft) and containing one or more of the following associated native plant species: *Freycinetia arborea, Touchardia latifolia* (olona), *Morinda trimera* (noni kuahiwi), *Metrosideros polymorpha, Clermontia kakeana* (oha wai), *Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus, Peperomia* spp., *Pleomele* spp. (halapepe), and *Athyrium* spp. (akolea) (J. Lau, pers. comm., 2001; Service 1997; 57 FR 20772; HINHP Database 2000; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Lanai included habitat degradation by feral pigs (Service 1997; 57 FR 20772).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau and Kauai, and from scattered locations on Oahu, Molokai, and Lanai. Currently it is found on Kauai, Niihau and Oahu. It was last observed on Lanai in 1919 (HINHP Database 2000; GDSI 2000).

Cyperus trachysanthos is usually found in seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* (pili) grassland at elevations between 0 and 46 m (0 and 151 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (J. Lau, pers. comm., 2001; 61 FR 53108; Koyama 1999; K. Wood, pers. comm., 2001).

On Lanai, the threats to this species included the loss of wetlands (61 FR 53108; Service 1999).

Cyrtandra munroi (haiwale)

Cyrtandra munroi is a short-lived perennial and a member of the African violet family (Gesneriaceae). It is a shrub with opposite, elliptic to almost circular leaves that are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et* al., 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra*, but not on *Cyrtandra munroi* specifically. These studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds, which eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyrtandra munroi was historically and is currently known from Lanai and Maui. Currently, on Lanai there are a total of two populations containing 17 individuals on privately owned land in the Kapohaku/Waiapaa area, and in the gulch between Kunoa and Waialala gulches (GDSI 2000; HINHP Database 2000).

The habitat of this species is diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *Metrosideros polymorpha* forest, typically on rich, moderately steep gulch slopes at elevations between 667 and 1,016 m (2,188 and 3,332 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include, *Diospyros sandwicensis, Bobea elatior, Myrsine lessertiana, Pipturus albidus, Pittosporum confertiflorum, Pleomele fernaldii, Sadleria cyatheoides, Scaevola chamissoniana, Xylosma hawaiiense, Cyrtandra grayii, Cyrtandra grayana Diplopterygium pinnatum, Hedyotis acuminata* (au), *Clermontia* spp., *Alyxia oliviformis, Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Melicope* spp., *Perrottetia sandwicensis, Pouteria sandwicensis*, and *Psychotria* spp. (HINHP Database 2000; Service 1995).

The threats to this species on Lanai are browsing and habitat disturbance by axis deer; competition with the alien plant species *Psidium cattleianum, Myrica faya, Leptospermum scoparium, Pluchea symphytifolia* (sourbush), *Melinis minutiflora* (molasses grass), *Rubus rosifolius* (thimbleberry), and *Paspalum conjugatum* (Hilo grass); depressed reproductive vigor; and loss of appropriate pollinators (Service 1995; 57 FR 20772).

Diellia erecta (NCN)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Molokai, Maui, Oahu, and the island of Hawaii and was recently rediscovered on Kauai. On Lanai it was last seen in 1929 (Service 1999; HINHP Database 2000).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Pisonia* spp. forest at elevations between 651 and 955 m (2,135 and 3,132 ft). Associated native plant species include native grasses and ferns (J. Lau, pers. comm., 2001; Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Diellia erecta* on Lanai included habitat degradation by pigs and goats, and competition with alien plant species (59 FR 56333; Service 1999).

Diplazium molokaiense (asplenium-leaved asplenium)

Diplazium molokaiense, a short-lived perennial member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is known only from Maui. It was last seen on Lanai in 1914 (HINHP Database 2000).

This species occurs in shady, damp places in wet forests at elevations between 737 and 1,032 m (2,417 and 3,385 ft) (J. Lau, pers. comm., 2001; Service 1998a; HINHP Database 2000).

The primary threats to *Diplazium molokaiense* on Lanai included habitat degradation by feral goats and pigs and competition with alien plant species (59 FR 49025; Service 1998a; HINHP Database 2000).

Hedyotis mannii (pilo)

Hedyotis mannii is a short-lived perennial and a member of the coffee family (Rubiaceae). It has smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.*, 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai. After a hiatus of 50 years, this species was rediscovered in 1987 by Steve Perlman on Molokai. In addition, a population was discovered on Maui and two populations, now numbering between 35 and 40 individual plants, were discovered on Lanai in 1991 on privately owned land in Maunalei and Hauola gulches (GDSI 2000; HINHP Database 2000; Service 1996b).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls and on steep stream banks in wet forests between 711 and 1,032 m (2,332 and 3,385 ft) in elevation. Associated plant species include *Thelypteris sandwicensis, Sadleria* spp., *Cyrtandra grayii, Scaevola chamissoniana, Freycinetia arborea*, and *Carex meyenii* (J. Lau, pers. comm., 2001; HINHP Database 2000; Service 1996b).

The limited number of individuals of *Hedyotis mannii* makes it extremely vulnerable to extinction from random environmental events. Feral pigs and alien plants, such as *Melinis minutiflora, Psidium cattleianum*, and *Rubus rosifolius*, degrade the habitat of this species and contribute to its vulnerability (57 FR 46325).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.*, 1999).

This species has been observed in flower from April through June and fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. It was last seen on Lanai in 1940 (GDSI 2000; HINHP Database 2000; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 737 and 1,032 m (2,417 and 3,385 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp. (hapuu), *Dicranopteris linearis, Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp. (uki), *Cheirodendron* spp. (olapa), or *Freycinetia arborea* (HINHP Database 2000; Service 1998b; 59 FR 14482; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Lanai included habitat degradation by feral pigs and goats, and competition with alien plant species (Service 1998b; 59 FR 14482; HINHP Database 2000).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar.

Two subspecies are currently recognized, *H. brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii. On Lanai, there are two populations containing an unknown number of individuals on privately owned land; one population is known from Keamuku Road, one from a fenced area on the dry plains of Kaena Point. Outplanted individuals that were initially planted in Kanepuu Preserve now appear to be reproducing naturally (Service 1999; GDSI 2000; HINHP Database 2000; Wesley Wong, Jr., formerly of Hawaii Division of Forestry and Wildlife, *in litt.* 1998).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry to mesic forest and shrubland between 0 and 645 m (0 and 2,116 ft) in elevation. Associated plant species include *Dodonea viscosa, Psydrax odoratum, Eurya sandwicensis* (anini), *Isachne distichophylla*, and *Sida fallax* (HINHP Database 2000; Service 1999).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Lanai are habitat degradation; possible predation by pigs, goats, axis deer, and rats (*Rattus rattus*); competition with alien plant species; fire; and susceptibility to extinction caused by naturally occurring events or reduced reproductive vigor (59 FR 56333; Service 1999).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole (stalk) is subtended

by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The flower stalk is white-hairy, and subtended by two bracts. Bracts arise at the tip of the main flower stalk. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.*, 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium was historically found on six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently it is found only on the island of Hawaii. It was last seen on Lanai in 1870 (Service 1996a; 59 FR 10305; GDSI 2000; HINHP Database 2000).

On Lanai, *Isodendrion pyrifolium* occured in dry shrubland at elevations between 132 and 574 m (433 and 1,883 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Lipochaeta* spp. (nehe), *Heteropogon contortus*, and *Wikstroemia oahuensis* (akia) (J. Lau, pers. comm., 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Lanai because the species was last seen there in 1870.

Mariscus fauriei (NCN)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. It has leaves shorter than or the same length as the stems and 1 to 3.5 mm (0.04 to 0.1 in) wide. This species differs from others in the genus in Hawaii by its smaller size and its more narrow, flattened, and more spreading spikelets (Koyama 1990; 59 FR 10305).

Little is known about the life history of *Mariscus fauriei*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1996a).

Historically, *Mariscus fauriei* was found on Molokai, Lanai, and the island of Hawaii. It currently occurs on Molokai and the island of Hawaii. It was last seen on Lanai in 1929 (59 FR 10305; HINHP Database 2000; GDSI 2000; Service 1996a).

Nothing is known of the preferred habitat of or native plant species associated with *Mariscus fauriei* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Mariscus fauriei* on the island of Lanai (Service 1996a).

Melicope munroi (alani)

Melicope munroi, a long-lived perennial of the rue (citrus) family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species is minutely hairy. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (a flower cluster) stalk (Stone *et al.*, 1999).

Little is known about the life history of *Melicope munroi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is known only from the Lanaihale summit ridge on Lanai. There are two populations totaling an estimated 300 to 800 individuals on privately owned land on the Lanaihale summit, head of Hauola gulch, Waialala gulch, and the ridge of Waialala gulch (HINHP Database 2000; 64 FR 48307; GDSI 2000; Service 2001).

Melicope munroi is typically found on slopes in lowland wet shrublands, at elevations of 701 and 1,032 m (2,299 and 3,385 ft). Associated native plant species include *Diplopterygium pinnatum, Dicranopteris linearis, Metrosideros polymorpha, Cheirodendron trigynum, Coprosma* spp., *Broussaisia arguta*, other *Melicope* spp., and *Machaerina angustifolia* (HINHP Database 2000; Service 2001).

The major threats to *Melicope munroi* on Lanai are trampling, browsing, and habitat degradation by axis deer and competition with the alien plant species *Leptospermum scoparium* and *Psidium cattleianum*. Random environmental events also threaten the two remaining populations (HINHP Database 2000; 64 FR 48307; Service 2001).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *N. sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.*, 1999).

Little is known about the life history of *Neraudia sericea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was historically found on Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is extant on Molokai and Maui. It was last seen on Lanai in 1913 (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in gulch slopes or gulch bottoms in dry-mesic or mesic forest at elevations between 693 and 869 m (2,273 and 2,850 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Diospyros sandwicensis, Nestegis sandwicensis*, and *Dodonaea viscosa* (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Lanai included habitat degradation by feral pigs and goats, and competition with alien plant species (Service 1999; 59 FR 56333).

Portulaca sclerocarpa (poe)

Portulaca sclerocarpa of the purslane family (Portulacaceae) is a short-lived perennial herb with a fleshy tuberous taproot, which becomes woody and has stems up to about 20 cm (8 in) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-

section. Dense tufts of hairs are located in each leaf axil (point of divergence between a branch or leaf) and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals (one of the modified leaves comprising a flower calyx) have membranous edges and the petals are white, pink, or pink with a white base. The hardened capsules open very late or not at all, and contain glossy, dark reddish-brown seeds. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *P. villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.*, 1999).

This species was observed in flower during March 1977, December 1977, and June 1978. The presence of juveniles indicated that pollination and germination were occurring. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1996a).

Portulaca sclerocarpa was historically and is currently found on the island of Hawaii, and on an islet (Poopoo Islet) off the south coast of the island of Lanai. The population on privately owned land on Poopoo Islet contains about 10 plants (HINHP Database 2000; GDSI 2000; Service 1996a). Poopoo Islet is a small rocky outcrop, 1 ha (2.4 ac) in area and approximately 200 m (600 ft) from the south shoreline of Lanai, and is considered part of the island of Lanai.

This species grows on exposed ledges in thin soil in coastal communities at elevations between 0 and 82 m (0 and 269 ft) (Wagner *et al.,* 1999; HINHP Database 2000).

The major threats to *Portulaca sclerocarpa* on Lanai are herbivory (feeding on plants) by the larvae of an introduced sphinx moth (*Hyles lineata*); competition from alien plants; and fire (Frank Howarth, Bishop Museum, *in litt.* 2000; 59 FR 10305; Service 1996a).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets, which are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.*, 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus, *Hylaeus,* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on two islands in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands. It was last seen on Lanai in 1957 (59 FR 56333; HINHP Database 2000; GDSI 2000).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 44 and 221 m (144 and 725 ft). It commonly occurs in coastal dry shrublands or mixed coastal dry cliffs with the associated native plant species *Chamaesyce celastroides* (akoko), *Cuscuta sandwichiana* (kaunaoa), *Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense, Nama sandwicensis* (nama), *Scaevola sericea* (naupaka kahakai), *Sida fallax, Sporobolus virginicus* (akiaki), *Vitex rotundifolia* (kolokolo kahakai) or *Waltheria indica* (uhaloa) (Service 1999; HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Lanai included habitat degradation caused by competition with various alien plant species; lack of adequate pollination; seed predation by rats, mice (*Mus musculus*) and, potentially, alien insects; and fire (59 FR 56333; Service 1999).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *Silene alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.*, 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 46325; Service 1996b).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. It was last observed on Lanai in 1930 (57 FR 46325; GDSI 2000; Service 1996b).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Lanai (Service 1996b).

Nothing is known of the threats to *Silene lanceolata* on the island of Lanai (Service 1996b).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333; Service 1999).

Historically, *Solanum incompletum* was known on Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. It was last seen on Lanai in 1925 (HINHP Database 2000; Service 1999).

On Lanai, *Solanum incompletum* occurred on broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland, at elevations between 151 and 372 m (495 and 1,220 ft) with one or more of the

following associated native plant species: *Heteropogon contortus, Lipochaeta* spp., and *Wikstroemia oahuensis* (Service 1999; J. Lau pers comm., 2001).

On Lanai, the threats to *Solanum incompletum* included habitat destruction by goats and competition with various alien plants (Service 1999).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Based on recent collections it is now known to be extant on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. On Lanai, this species is known from three populations of 570 to 620 individuals on privately owned land: in the southern edge of Kapoho Gulch, Kamiki Ridge, and approximately 274 m (900 ft) downslope of Puu Manu (59 FR 56333; HINHP Database 2000; R Hobdy, pers. comm., 2000; Service 1999).

Spermolepis hawaiiensis is known from gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis*, or shrublands dominated by *Dodonaea viscosa* at elevations between 402 and 711 m (1,319 and 2,332 ft). Associated native plant species include *Nestegis sandwicensis, Nesoluma polynesicum, Psydrax odorata,* and *Rauvolfia sandwicensis* (J. Lau, pers. comm., 2001; HINHP Database 2000; R. Hobdy, pers. comm., 2000; Service 1999).

The primary threats to *Spermolepis hawaiiensis* on Lanai are habitat degradation by feral goats, competition with various alien plants, such as *Lantana camara*; and erosion, landslides, and rockslides due to natural weathering, which result in the death of individual plants as well as habitat destruction (59 FR 56333; Service 1999; R. Hobdy, pers. comm., 2000; Service 1999).

Tetramolopium lepidotum ssp. lepidotum (NCN)

Tetramolopium lepidotum ssp. *lepidotum*, a member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. Leaves of this taxon are lance-shaped, wider at the leaf tip, and measure 1.0 to 1.8 in (25 to 45 mm) long and 0.04 to 0.3 in (1 to 7 mm) wide. Flower heads are arranged in groups of six to 12. The involucre is bell-shaped and less than 0.2 in (4 mm) high. Florets are either female or bisexual, with both occurring on the same plant. There are 21 to 40 white to pinkish-lavender ray florets 0.04 to 0.08 in (1 to 2 mm) long on the periphery of each head. In the center of each head there are four to eleven maroon to pale salmon disk florets. The fruits are achenes, 0.06 to 0.1 in (1.6 to 2.5 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This taxon can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of six to 12 heads (Lowrey 1999).

Tetramolopium lepidotum ssp. *lepidotum* is a short-lived perennial that has been observed producing fruit and flowers from April through July. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (56 FR 55770; Service 1998b).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from Oahu and Lanai. It currently occurs only on Oahu. It was last seen on Lanai in 1928 (56 FR 55770; Service 1998b HINHP Database 2000; GDSI 2000; EDA Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Nothing is known of the threats to *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. Its leaves are firm, very narrow, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are each comprised of 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than 1 flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation; the adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. The aridity of the area, possibly coupled with human-induced changes in the habitat and subsequent lack of availability of suitable sites for seedling establishment, may be a factor limiting population growth and expansion. Requirements of this taxon in these areas are not known, but success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be by butterflies, bees, or flies. Seed dispersal agents, environmental requirements, and other limiting factors are unknown (Lowrey 1986; Service 1995).

Historically, the species was known from Maui and Lanai. Currently, *Tetramolopium remyi* is known only from two populations on Lanai on privately owned land, one near Awalua Road and the other near Awehi Road, with a total of approximately 66 plants (GDSI 2000; HINHP Database 2000).

Tetramolopium remyi is found in red, sandy, loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities at elevations between 65 and 485 m (213 and 1,591 ft). Commonly associated native species include *Bidens mauiensis* (kookoolau), *Waltheria indica, Wikstroemia oahuensis,* and *Lipochaeta lavarum* (nehe) (HINHP Database 2000).

Browsing by deer and mouflon sheep (*Ovis musimon*) and competition from alien species, primarily *Andropogon viginicus* (broomsedge) and *Panicum maximum* (guinea grass), are the main threats to the species on Lanai. Fire is also a potential threat (Service 1995; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets, which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of 1 to 4, have thin, translucent, pale yellow or greenish-yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.,* 1999).

Little is known about the life history of *Vigna o-wahuensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Based on recent collections, *Vigna o-wahuensis* is now known to be extant on the islands of Molokai, Maui, Lanai, Kahoolawe, and Hawaii. On Lanai, one population with at least one individual is known from Kanepuu on privately owned land (GDSI 2000; HINHP Database 2000; J. Lau, *in litt.* 2000; Service 1999).

On Lanai, *Vigna o-wahuensis* is found in *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest at elevations between 98 and 622 m (321 and 2,040 ft) (HINHP Database 2000; J. Lau, pers. comm., 2001; 59 FR 56333).

Threats to *Vigna o-wahuensis* on Lanai include habitat degradation by pigs and axis deer; competition with various alien plant species; fire; and random naturally occurring events causing extinction and or reduced reproductive vigor of the only remaining individual on Lanai (Service 1999).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-sized tree in the rue (citrus) family (Rutaceae) with pale to dark gray bark, and lemon-scented leaves. Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Z. hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.,* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. It was last seen on Lanai in 1947 (HINHP Database 2000; GDSI 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

A summary of populations and landownership for the 37 plant species reported from the island of Lanai is given in Table 3.

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI

Species	Number of current populations	Landownership		
		Federal	State	Private
Abutilon eremitopetalum	1			X
Adenophorus periens	0			
Bidens micrantha	0			
Bonamia menziesii	3			X
Brighamia rockii	0			
Cenchrus agrimonioides	0			
Centaurium sebaeoides	1			X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Ctenitis squamigera	2			X
Cyanea grimesiana ssp. *grimesiana*	2			X
Cyanea lobata	0			
Cyanea macrostegia ssp. *gibsonii*	2			X
Cyperus trachysanthos	0			
Cyrtandra munroi	2			X
Diellia erecta	0			
Diplazium molokaiense	0			
Gahnia lanaiensis	1			X
Hedyotis mannii	2			X
Hedyotis schlechtendahliana var. *remyi*	2			X
Hesperomannia arborescens	0			
Hibiscus brackenridgei	2			X
Isodendrion pyrifolium	0			
Labordia tinifolia var. *lanaiensis*	1			X
Mariscus fauriei	0			
Melicope munroi	2			X
Neraudia sericea	0			
Phyllostegia glabra var. *lanaiensis*	0			
Portulaca sclerocarpa	1			X
Sesbania tomentosa	0			
Silene lanceolata	0			
Solanum incompletum	0			
Spermolepis hawaiiensis	3			X

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Tetramolopium lepidotum ssp. *lepidotum*	0	.....	.....	.....
Tetramolopium remyi	2	.....	.....	X
Vigna o-wahuensis	1	.....	.....	X
Viola lanaiensis	2	.....	.....	X
Zanthoxylum hawaiiense	0	.....	.....	.....

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bonamia menziesii, Brighamia rockii, Cyanea lobata* (as *Cyanea baldwinii*), *Gahnia lanaiensis, Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei,* var. *mokuleianus,* and var. ''from Hawaii''), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Portulaca sclerocarpa, Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene lanceolata, Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum,* var. *incompletum,* and var. *mauiensis*), *Tetramolopium lepidotum* ssp. *lepidotum, Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), *Viola lanaiensis,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*) were considered endangered; *Cyrtandra munroi, Diellia erecta, Labordia tinifolia* var. *lanaiensis,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Abutilon eremitopetalum, Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera, Cyanea macrostegia* ssp. *gibsonii, Diplazium molokaiense, Isodendrion pyrifolium, Melicope munroi* (as *Pelea munroi*), *Phyllostegia glabra* var. *lanaiensis,* and *Tetramolopium remyi* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyrtandra munroi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi.* The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 37 plant species in the 1980 through 1996 notices of review can be found in Table 4(a). We listed the 37 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 37 PLANT SPECIES ON LANAI

Species	FEDERAL REGISTER Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Abutilon eremitopetalum	C1	C1	C1	.....	.....
Adenophorus periens	C1	C1	C1	.....	.....
Bidens micrantha	C1	C1	C1	.....	.....
Bonamia menziesii	C1	C1	C1	.....	.....
Brighamia rockii	C1	C1	C1	.....	.....
Cenchrus agrimonioides	.....	.....	.....	.....	.....
Centaurium sebaeoides	.....	.....	C1	.....	.....
Clermontia oblongifolia ssp. *mauiensis*	.....	.....	C1	.....	.....
Ctenitis squamigera	C1*	C1*	C1*	.....	.....
Cyanea grimesiana ssp.*grimesiana*	C1	C1	.....	C2	.....
Cyanea lobata	C1	C1	C1	.....	.....
Cyanea macrostegia ssp. *gibsonii*	C1	C1	C1	.....	.....
Cyperus trachysanthos	.....	.....	.....	C2	.....
Cyrtandra munroi	C2	C2	C1	.....	.....
Diellia erecta	C1	C1	C1	.....	.....

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 37 PLANT SPECIES ON LANAI—Continued

Species	FEDERAL REGISTER Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Diplazium molokaiense	C1*	C1*	C1	.....	.....
Gahnia lanaiensis	C1	C1	C1	.....	.....
Hedyotis mannii	C1*	C1*	C1	.....	.....
Hedyotis schlechtendahliana var. *remyi*	.....	.....	C2	C2	C
Hesperomannia arborescens	C1	C1	C1	.....	.....
Hibiscus brackenridgei	C1	C1	C1	.....	.....
Isodendrion pyrifolium	C1*	C1*	3A	.....	.....
Labordia tinifolia var. *lanaiensis*	C2	C2	3C	3C	.....
Mariscus fauriei	.....	.....	C1	.....	.....
Melicope munroi	C1*	C1*	C2	C2	C
Neraudia sericea	3A	3A	C1	.....	.....
Phyllostegia glabra var. *lanaiensis*	C1	C1	C1	.....	.....
Portulaca sclerocarpa	C1	C1	C1	.....	.....
Sesbania tomentosa	C1*	C1*	C1	.....	.....
Silene lanceolata	C1	C1	C1	.....	.....
Solanum incompletum	C1*	C1*	C1	.....	.....
Spermolepis hawaiiensis	.....	.....	C1	.....	.....
Tetramolopium lepidotum ssp. *lepidotum*	C1	C1	C1	.....	.....
Tetramolopium remyi	C1	C1	C1	.....	.....
Vigna o-wahuensis	C1	C1	C1	.....	.....
Viola lanaiensis	C1	C1	C1	.....	.....
Zanthoxylum hawaiiense	C1	C1	C1	.....	.....

Key:
C: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If further research or changes in habitat indicate a significant decline in any of these taxa, they may be reevaluated for possible inclusion in categories C1 or C2.
Federal Register Notices of Review—
1980: 45 FR 82479 1985: 50 FR 39525 1990: 55 FR 6183 1993: 58 FR 51144 1996: 61 FR 7596

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI

Species	Federal status	Proposed rule		Final rule		Purdency and/or proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Abutilon eremitopetalum	E	09/17.90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Adenophorus periens	E	09/14/93	58 FR 48102	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/29/00	65 FR 83157
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/7/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						01/28/02	67 FR 3940
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Clermontia oblongifolia ssp. *mauiensis*.	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 8315
Cyanea grimesiana ssp. *grimesiana*.	E	10/02/95	60 FR 51417	10/10/96	64 FR 53108	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 8315
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea macrostegia ssp. *gilsonii*.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Cyperus trachysanthos	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/0	65 FR 66808
						01/28/02	67 FR 3940

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI—Continued

Species	Federal status	Proposed rule		Final rule		Purdency and/or proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Diplazium molokaiense	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Gahnia lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
Hedyotis schlechtendahliana var. *remyi*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	01/28/02	67 FR 3940
Labordia tinifolia var. *lanaiensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/29/00	65 FR 83157
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Phyllostegia glabra var. *lanaiensis*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/29/00	65 FR 83157
Portulaca sclerocarpa	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/27/00	65 FR 82086
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						01/28/02	67 FR 3940
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	01/28/02	67 FR 3940
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/27/00	65 FR 82086
						12/29/00	65 FR 83157
						12/28/00	67 FR 3940
Tetramolopium lepidotum ssp. *lepidotum*	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
						12/29/00	65 FR 83157
Viola lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00	65 FR 66808
						12/18/00	65 FR 79192
						12/29/00	65 FR 83157
						12/28/00	67 FR 3940
						01/28/02	

Key: E= Endangered, T= Threatened

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*) and not prudent for the other 34 plants because it would not benefit the plant or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 34 of the 37 species reported from Lanai. Among other things, the court held that, in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* (64 FR 48307), we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these three taxa, along with seven others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

In early February 2000, we hand-delivered a letter to representatives of the private landowner on Lanai requesting any information considered germane to the management of any of the 37 plants on the island, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants on Lanai, and a handout containing general information on critical habitat. On April 4, 2000, we met with representatives of the landowner to discuss their current land management activities. In addition, we met with Maui County DOFAW staff and discussed their management activities on Lanai.

On December 27, 2000, we published the third of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for 18 Lanai plants (65 FR 82086). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals we determined that critical habitat was prudent for 33 species (*Abutilon eremitopetalum*, *Adenophorus periens*, *Bidens micrantha* ssp. *kalealaha*, *Bonamia menziesii*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyperus trachysanthos*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiense*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Labordia tinifolia* var. *lanaiensis*, *Mariscus fauriei*, *Melicope munroi*, *Neraudia sericea*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Tetramolopium remyi*, *Vigna o-wahuensis*, *Viola lanaiensis*, and *Zanthoxylum hawaiiense*) that are reported from Lanai as well as on Kauai, Niihau, Maui, Kahoolawe, and Molokai.

In the December 27, 2000, proposal we determined that it was prudent to designate approximately 1,953 ha (4,826 ac) on Lanai as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on February 26, 2001. On February 22, 2001, we published a notice (66 FR 11133) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Lanai and a notice of a public hearing. On March 22, 2001, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On April 6, 2001, we published a notice (66 FR 18223) announcing corrections to the proposed rule. These corrections included changes to the map of general locations of units and new UTM coordinates and increased the total proposed critical habitat to 2,034 ha (5,027 ac).

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to

designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, in the Kauai revised proposal, we determined that designation of critical habitat was prudent for *Isodendrion pyrifolium* and *Solanum incompletum*, two species reported from Lanai as well as Kauai, Maui, and Molokai. The designation of critical habitat is proposed for both of these species on Lanai. Publication of this revised proposal for plants from Lanai is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the December 27, 2000, proposed rule (65 FR 82086), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on February 26, 2001. We reopened the comment period from February 22, 2001, to April 2, 2001 (66 FR 11133), to accept comments on the proposed designations and to hold a public hearing on March 22, 2001, in Lanai City, Lanai.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on January 8, 2001, and the *Maui News* on January 4, 2001. We received one request for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and in the *Maui News* newspapers on March 2, 2001. A transcript of the hearing held in Lanai City, Lanai on March 22, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Lanai plants to peer review the proposed critical habitat designations. One peer reviewer submitted comments on the proposed critical habitat designations, providing updated biological information, critical review, and editorial comments.

We received a total of two oral comments, three written comments, and two comments both in written and oral form during the two comment periods. These included responses from one State office, and six private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Lanai plants. Of the seven comments we received, five supported designation, one was opposed and one provided information and declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat determinations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment*: The designation of critical habitat for these plant species in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the conservation of these species.

Our Response: We agree. Our recovery plans for these species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001) identify the need to expand existing populations and reestablish wild populations within their historical range. We have revised the December 27, 2000, proposal to include areas of unoccupied habitat for some of the species from Lanai.

(2) *Comment*: The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, some of the data used by the Service was 30 years old or older.

Our Response: When developing the December 27, 2000, proposal to designate critical habitat for 18 plants from Lanai, we used the best scientific and commercial data available at the time, including but not limited to information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information, and address comments and new information received during the comment periods. This additional information comes from Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership), and information received during the public comment periods and the public hearing (R. Hobdy, *in litt.* 2001; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001).

(3) *Comment*: The proposed critical habitat designations should be delayed until a coordinated plan with public input is coordinated.

Our Response: We must comply with the orders of the Federal courts. As stated earlier, on August 10, 1998, the Court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074). On March 28, 2000, the Court ordered us to integrate 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule for designating critical habitat for the other 245 Hawaiian plants.

On December 27, 2000, we published the third of the court-ordered prudency determinations and/or proposed critical habitat designations, for 18 Lanai plants (65 FR 82086). On October 5, 2001, the joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), Molokai (October 16, 2002) was approved and ordered by the court.

Publication of this revised proposed critical habitat designations for Lanai plants is consistent with the court-ordered stipulation.

Issue 2: Site-specific Biological Comments

(4) *Comment*: Critical habitat should be designated for *Phyllostegia glabra* var. *lanaiensis* because habitats have not been adequately surveyed and this species may still be extant in the wild.

Our Response: No change is made here to the prudency determination for

Phyllostegia glabra var. *lanaiensis*, a species known only from Kaiholena on Lanai, published in the December 27, 2000, proposal (65 FR 82086). *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai for over 80 years. This species was last observed at Kaiholena on Lanai in 1914 and has not been observed since. A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (R. Hobdy, pers. comm., 1992). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Phyllostegia glabra* var. *lanaiensis* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

Issue 3: Legal Issues

(5) *Comment*: The Service failed to comply with court deadlines set forth in both *Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 1074 (D.Haw. 1998), and *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 (D.Haw. Mar. 28, 2000).

Our Response: The proposed rules for plants from Kauai, Niihau, Maui, Kahoolawe, Lanai, and Molokai were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods on the December 27, 2000, proposal for plants from Lanai. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Lanai is consistent with the joint stipulation.

(6) *Comment:* The Service should designate critical habitat on the Kanepuu Preserves since excluding them potentially violates the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable'' (16 U.S.C. 1533(a)(3)).

Our Response: Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

The Service found that the plants and their habitats within the Kanepuu Preserve receive long-term protection and management and, thus these lands are not in need of special management considerations or protection. In our December 27, 2000, proposal we determined that the lands within the Kanepuu Preserve do not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. No change is made to this determination in this revised proposal. Should the status of this preserve change, for example by non-renewal of a partnership agreement or termination of funding, we will reconsider whether the lands within Kanepuu Preserve meet the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time 50 CFR 424.12(g).

Issue 4: Mapping and Primary Constituent Elements

(7a) *Comment:* The designated areas are too large. (7b) *Comment:* The units are not large enough, and don't allow for changes that occur during known environmental processes. (7c) *Comment:* Make units B, C, D, E, F, H, I , and J smaller. (7d) *Comment:* The highly irregular and fragmented shape of proposed units make it difficult to determine if projects are within critical habitat.

Our Response: We have revised the proposed designations published in the December 27, 2000, proposal for Lanai plants to incorporate new information, and address comments and new information received during the comment periods. Areas that contain habitat necessary for the conservation of the species were identified and delineated on a species by species basis. When species units overlapped, we combined units for ease of mapping (see also Methods section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of 32 plant species from Lanai.

Issue 5: Effects of Designation

(8) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program).

Our Response: We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat requires Federal agencies to consult under section 7 of the Act with us on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies cannot result in jeopardy to listed species, and they cannot adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the conservation of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs are implemented consistent with this need.

(9) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. Its regulatory implications apply only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing, and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans.

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the

island of Lanai on December 27, 2000. In proposals published on November 7, 2000, and December 18, 2000, we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai and Niihau, and Maui and Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii* (we incorrectly determined prudency for this species in the December 27, 2000, proposal as well), *Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999, we determined that the designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 82086, 65 FR 66808, 65 FR 79192).

In the December 27, 2000, proposal we determined that critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* a species endemic to Lanai, because it had not been seen since 1914 and no viable genetic material of this species is known to exist. No change is made here to the December 27, 2000, prudency determination for *Phyllostegia glabra* var. *lanaiensis* and it is hereby incorporated by reference (65 FR 82086).

In the December 27, 2000, proposal we proposed designation of critical habitat for 18 plants from the island of Lanai. These species are: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi,* and *Viola lanaiensis.* In this proposal, we have revised the proposed designations for these 18 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 27, 2000, proposal.

In the December 27, 2000, proposal, we did not propose designation of critical habitat on Lanai for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus faurei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (65 FR 66808), December 18, 2000 (65 FR 79192), December 29, 2000 (65 FR 83157), and January 28, 2002 (67 FR 3940). In this proposal we incorporate the prudency determinations for these 16 species and propose designation of critical habitat for *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Sesbania tomentosa,* and *Solanum incompletum* on the island of Lanai, based on new information and information received during the comment periods on the December 27, 2000, proposal. Critical habitat is not proposed on Lanai for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* because they no longer occur on Lanai and we are unable to identify habitat which is essential to their conservation on this island.

In this proposal, we determine that critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum* for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). However, critical habitat for this species is not included in this proposal because it no longer occurs on Lanai and we are unable to identify habitat which is essential to its conservation on this island.

Based on a review of new biological information and public comments received we have revised our December 27, 2000, proposal to incorporate the following additional changes: changes in our approach to delineating proposed critical habitat (see *Criteria Used to Identify Critical Habitat*); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid nonessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and inclusion of new areas, such as Hawaiilanui Gulch within unit Lanai C and Paliamano Gulch within unit Lanai F, that are essential for the conservation of one or more of the 32 plant species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where

significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the island of Lanai on December 27, 2000. In proposals published on November 7, 2000, and December 18, 2000, we determined that designation of critical habitat was prudent for ten plants that are reported from Lanai as well as from Kauai and Niihau, and Maui and Kahoolawe. These ten plants are: *Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis.* In addition, at the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* on September 3, 1999, we determined that the designation of critical habitat was prudent for these three taxa from Lanai. No change is made to these 19 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086).

No change is made here to the prudency determination for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Lanai, published in the December 27, 2000, proposal and hereby incorporated by reference (65 FR 82086). *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai since 1914. In addition, this plant is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Phyllostegia glabra* var. *lanaiensis* was not prudent because such designation would be of no benefit to this taxon. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

In the December 27, 2000, proposal, we did not determine prudency nor propose designation of critical habitat for 17 species that no longer occur on Lanai but are reported from one or more other islands. We determined that critical habitat was prudent for 16 of these species (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum,* and *Zanthoxylum hawaiiense*) in other proposed rules published on November 7, 2000 (Kauai and Niihau), December 18, 2000 (Maui and Kahoolawe), December 29, 2000 (Molokai), and January 28, 2002 (Kauai reproposal). No change is made to these prudency determinations for these 16 species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, 65 FR 83157, 67 FR 3940). Critical habitat is not proposed for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense* on the island of Lanai because we are unable to identify habitat which is essential to their conservation on this island.

To determine whether critical habitat would be prudent for *Tetramolopium lepidotum* spp. *lepidotum,* a species for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu) we analyzed the potential threats and benefits for this species in accordance with the court orders. This plant was listed as an endangered species under the Endangered Species Act of 1973, as amended (Act) in 1991. At that time, we determined that designation of critical habitat for *Tetramolopium lepidotum* spp. *lepidotum* was not prudent because

designation would increase the degree of threat to this species and/or would not benefit the plant. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *T. lepidotum* ssp. *lepidotum* in the future, consistent with applicable regulations (50 CFR 424, 12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *T. lepidotum* ssp. *lepidotum* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Tetramolopium lepidotum* ssp. *lepidotum* is reported from Federal lands on Oahu (the U.S. Army's Schofield Barracks Military Reservation) where actions are subject to section 7 consultation, as well as on State and private lands. Although currently there may be limited Federal activities on these State and private lands, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *T. lepidotum* ssp. *lepidotum* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of this species and dissemination of information regarding its essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum.*

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha ssp. kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia ssp. mauiensis, Ctenitis squamigera, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia ssp. gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana var. remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia var. lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum ssp. lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense.* This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 36 species; the December 27, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; 65 FR 82086; GDSI 2000).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the 32 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are

protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In the December 27, 2000, proposal we identified the physical and biological features that are considered essential to the conservation of the 19 species on the island of Lanai (65 FR 82086). Based on new information and information received during the comment periods on the December 27, 2000, proposal we have revised our description of these physical and biological features in this proposal.

In the December 27, 2000, proposal we did not propose designation of critical habitat for the 16 species that no longer occur on Lanai but are reported from one or more other islands and for which we had determined, in other rules, that designation of critical habitat was prudent. Based on new information and information received during the comment periods on the December 27, 2000, proposal, we have identified the physical and biological features on Lanai that are considered essential to the conservation of 13 of the 16 species. We are unable to identify these features for *Mariscus faurei, Silene lanceolata,* and *Zanthoxylum hawaiiense,* which no longer occur on the island of Lanai, because information on the physical and biological features (i.e., the primary constituent elements) that are considered essential to the conservation of these three species on Lanai is not known. *Mariscus faurei* and *Silene lanceolata* have not been observed on Lanai since 1930 while *Zanthoxylum hawaiiense* has not been observed on Lanai since 1947, and we are not able to identify the primary constituent elements that are considered essential to their conservation on Lanai from the historical records. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of these species on the island of Lanai. However, proposed critical habitat designations for *Mariscus fauriei, Silene lanceolata,* and *Zanthoxylum hawaiiense* were included in proposals published on November 7, 2000, December 18, 2000, or on December 29, 2000 (65 FR 66808, 65 FR 79192, 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Mariscus fauriei, Silene lanceolata,* and *Zanthoxylum hawaiiense* within the historic range for each species on other Hawaiian islands.

In this proposal, we determine that the designation of critical habitat is prudent for one species (*Tetramolopium lepidotum* ssp. *lepidotum*) for which a prudency determination has not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu). We are unable to identify the physical and biological features that are considered essential for the conservation of *Tetramolopium lepidotum* ssp. *lepidotum,* which no longer occurs on the island of Lanai, because information on the physical and biological features (i.e., the primary constituent elements) that are considered essential to the conservation of this species on Lanai is not known. *Tetramolopium lepidotum* ssp. *lepidotum* has not been observed on Lanai since 1928, and we are not able to identify the primary constituent elements that are considered essential to its conservation on Lanai from the historical record. Therefore, we are not able to identify the specific areas outside the geographic areas occupied by this species at the time of its listing (unoccupied habitat or where the species is not present) that are essential for the conservation of *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai. However, we will consider proposing designation of critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* within the historic range for this species on other Hawaiian islands.

All areas proposed as critical habitat are within the historical range of one or more of the 32 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 32 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Lanai.

D. Criteria Used To Identify Critical Habitat

In the December 27, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we proposed to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 18 plant species. Specific details regarding the delineation of the proposed critical habitat units are given in the December 27, 2000, proposal (65 FR 82086). In that proposal we did not include potentially suitable unoccupied habitat that is important to the conservation of the 18 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

However, following publication of the December 27, 2000 (65 FR 82086) proposal we received new information regarding the physical and biological features that are considered essential for the conservation of many of these 32 species and information on potentially suitable habitat within the historical range for many of these species. Based on a review of this new biological information and public comments received following publication of the other three proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990;

Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 32 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island (*e.g., Gahnia lanaiensis* and *Viola lanaiensis*), and the proposed critical habitat designations reflect this exception for these species. To be considered recovered each population of a species endemic to the island of Lanai should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains 100, 300, or 500 individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, that could destroy a large percentage of a species at any one time, may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is *longevity* (i.e., long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of

species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more island(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements based on the general habitat features of the areas in which the plants are reported from such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 32 plant species.

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

1. We focused on designating units representative of the known current and historical geographic and elevational range of each species;

2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

3. Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996). For each multi-island species we evaluated areas that have been proposed as critical habitat for each species in other published critical habitat proposals to determine if additional areas were essential on Lanai for the conservation of the species. If additional areas, on Lanai, were determined to be essential for the species' conservation we then followed the afore-mentioned protocol to delineate proposed critical habitat for the species.

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 32 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations for some larger proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, section 7 consultation is generally necessary and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 32 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing man-made features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the

best available information, we believe these areas constitute the habitat necessary on Lanai to provide for the recovery of these 32 species.

E. Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 32 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, we contacted the major private landowner on Lanai by mail and we met with the landowner's representatives in April 2000 to discuss their current management for the plants on their lands. We also met with Maui County DOFAW office staff to discuss management activities they are conducting on Lanai. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining whether a management plan or agreement provides a conservation benefit to the species, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Bruegmann *et al.* 2001);

(2) The recommendations from the HPPRCC in their 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 32 species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone et al. 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001): feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access. On a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical

requirements of the species and the location(s) of the individual plants.

As shown in Table 3, the proposed critical habitat designations for 32 species of plants are found on private lands on the island of Lanai. Information received in response to our public notices, meetings with representatives of the landowner and Maui County, DOFAW staff, the December 27, 2000, proposal, public comment periods, and the March 22, 2001, public hearing, as well as information in our files, indicated that there is little on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Private Lands

One species (*Bonamia menziesii*) is reported from The Nature Conservancy of Hawaii's Kanepuu Preserve which is located in the northeast central portion of Lanai (GDSI 2000; HINHP Database 2000; The Nature Conservancy of Hawaii (TNCH) 1997). This preserve was established by a grant of a perpetual conservation easement from the private landowner to TNCH and is included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there is always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing 6 year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the State Department of Land and Natural Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11, and Hawaii Administrative Rules Sec. 13–210.

The management program within the preserve is documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plant and its habitat within the preserve (TNCH 1997, 1998, 1999). These management measures address the factors which led to the listing of this species including control of non-native species of ungulates, rodents, and weeds; and fire control. In addition, habitat restoration and monitoring are also included in these plans.

The primary goals within Kanepuu Preserve are to: (1) Control non-native species; (2) suppress wildfires; and (3) restore the integrity of the dryland forest ecosystem through monitoring and research. Specific management actions to address feral ungulates include the replacement of fences around some of the management units with Benzinal-coated wire fences as well as staff hunting and implementation of a volunteer hunting program with the DLNR. Additionally, a small mammal control program has been established to prevent small mammals from damaging rare native species and limit their impact on the preserve's overall native biota.

To prevent further displacement of native vegetation by non-native plants, a non-native plant control plan has been developed, which includes monitoring of previously treated areas, and the control of non-native plants in management units with restoration projects.

The fire control program focuses on suppression and pre-suppression. Suppression activities consist of coordination with State and county fire-fighting agencies to develop a Wildfire Management Plan for the preserve (TNCH 1998). Pre-suppression activities include mowing inside and outside of the fence line to minimize fuels.

A restoration, research, and monitoring program has been developed at Kanepuu to create a naturally regenerating *Nestegis sandwicensis-Diospyros sandwicensis* dryland forest, and expand the current range of native-dominated vegetation. Several years of casual observation indicate that substantial natural regeneration is occurring within native forest patches in the deer-free units (TNCH 1999). A draft of the Kanepuu Restoration Plan was completed in June 1999. This plan identifies sites for rare plant outplanting and other restoration activities. Monitoring is an important component to measure the success or failure rate of the animal and weed control programs. Management of these non-native species control programs is continually amended to preserve the ecological integrity of the preserve.

Because this plant and its habitat within the preserve is protected and managed, this area is not in need of special management considerations or protection. Therefore, we have determined that the private land within Kanepuu Preserve does not meet the definition of critical habitat in the Act, and we are not proposing to designate this land as critical habitat. Should the status of this reserve change, for example, by non-renewal of the partnership agreement or termination of NAP funding, we will reconsider whether it meets the definition of critical habitat, and if so, we may propose to amend critical habitat to include the preserve at that time (50 CFR 424.12(g)).

We believe that Kanepuu Preserve is the only potential critical habitat area on Lanai at this time that does not require special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach. If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 32 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

The proposed critical habitat areas described below constitute our best

assessment of the physical and biological features needed for the conservation of the 32 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this revised proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

Proposed critical habitat includes habitat for these 32 species predominantly on the eastern side of Lanai in the Lanaihale area. Lands proposed as critical habitat have been divided into 8 units (Lanai A through Lanai H). A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]

Unit name	State/Local	Private	Federal	Total
Lanai A		574 ha (1,418 ac)		574 ha (1,418 ac)
Lanai B		551 ha (1,363 ac)		551 ha (1,363 ac)
Lanai C		222 ha (549 ac)		222 ha (549 ac)
Lanai D		5,861 ha (14,482 ac)		5,861 ha (14,482 ac)
Lanai E		162 ha (400 ac)		162 ha (400 ac)
Lanai F		331 ha (818 ac)		331 ha (818 ac)
Lanai G		151 ha (373 ac)		151 ha (373 ac)
Lanai H		1 ha (2 ac)		1 ha (2 ac)
Grand Total		7,853 ha (19,405 ac)		7,853 ha (19,405 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or difference due to rounding.

Descriptions of Critical Habitat Units

Lanai A

The proposed unit Lanai A provides occupied habitat for one species, *Hibiscus brackenridgei*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more of the 8 to10 populations and 300 mature individuals per population for *Hibiscus brackenridgei*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai A below).

This unit provides unoccupied habitat for one species, *Cyperus trachysanthos*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations, with 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai A below).

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Table for Lanai A

Species	Cyperus trachysanthos	Hibiscus brackenridgei
1. 8–10 pop. guidelines.	X*	X*
2. Island endemic.		
3. Multi-island/current other islands.	X**	X
4. Multi-island/no current other islands.		
5. Non-viable populations.	X	X
6. Several occ. vulnerable to destruction.		
7. Species with variable habitats.		X
8. Not all occupied habitat needed.		
9. Long-lived perennial–100/pop.		
10. Short-lived perennial–300/pop.	X	X
11. Annual–500/pop.		
12. Narrow endemic.		
13. Restricted habitat requirements.	X** *	
14. Hybridization is possible.		
Notes	*Species is wide ranging.‡ **Historical on Lanai. ***Seeps.	*Species is wide ranging.‡

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The unit contains a total of 574 ha (1,418 ac) on privately owned land. It is bounded on the north by Puumaiekahi watershed and on the south by Kaapahu watershed. The natural features include: Kaea, Kaena Point, Kaenaiki Cape, and Keanapapa Point.

Lanai B

The proposed unit Lanai B provides occupied habitat for one species, *Tetramolopium remyi*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai and provides habitat to support one or more of the 8 to10 populations of 300 mature individuals per population for *Tetramolopium remyi*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai B below).

The unit contains a total of 551 ha (1,363 ac) on privately owned land. It is bounded on the west by Puumaiekahi watershed and on the east by Lapaiki watershed. The natural features include: Puumaiekahi Gulch and Lapaiki Gulch.

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Table for Lanai B

Notes	*Red sandy loam soil in dry Dodonaea viscosa/Heteropogon contortus communities.
14. Hybridization is possible.	
13. Restricted habitat requirements.	X*
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	
6. Several occ. vulnerable to destruction.	X
5. Non-viable populations.	X
4. Multi-island/no current other islands.	X
3. Multi-island/current other islands.	
2. Island endemic.	
1. 8–10 pop. guidelines.	X
Species	Tetramolopium remyi

BILLING CODE 4310–55–C

Lanai C

The proposed unit Lanai C provides unoccupied habitat for one species, *Sesbania tomentosa*. Designation of this unit is essential to the conservation of *S. tomentosa* because it contains the physical and biological features that are considered essential for its conservation on Lanai, and it provides habitat to support one or more additional populations necessary to meet the recovery objectives, throughout its known historical range, of 8 to 10 populations with 300 mature individuals per population considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai C below).

The unit contains a total of 222 ha (549 ac) on privately owned land. It is bounded on the west by Lapaiki watershed and on the east by Hawaiilanui watershed. The natural features include: Hawaiilanui Gulch.

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Table for Lanai C

Notes	*Species is wide ranging.‡ **Historical on Lanai.
14. Hybridization is possible.	
13. Restricted habitat requirements.	
12. Narrow endemic.	
11. Annual–500/pop.	
10. Short-lived perennial–300/pop.	X
9. Long-lived perennial–100/pop.	
8. Not all occupied habitat needed.	
7. Species with variable habitats.	X
6. Several occ. vulnerable to destruction.	
5. Non-viable populations.	X**
4. Multi-island/no current other islands.	
3. Multi-island/current other islands.	X**
2. Island endemic.	
1. 8–10 pop. guidelines.	X*
Species	Sesbania tomentosa

BILLING CODE 4310–55–C

Lanai D

The proposed unit Lanai D provides occupied habitat for 17 species: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi,* and *Viola lanaiensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Lanai, and provides habitat to support one or more of the 8 to 10 populations of 100 mature individuals per population for *Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi,* or 300 mature individuals per population for *Bonamia menziesii, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Tetramolopium remyi,* and *Viola lanaiensis,* or 500 mature individuals per population for *Centaurium sebaeoides* and *Spermolepis hawaiiense* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Lanai D below). This unit provides unoccupied habitat for 11 species: *Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species of 100 mature individuals per population for *Brighamia rockii* and *Hesperomannia arborescens,* or 300 mature individuals per population for *Adenophorus periens, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Lanai D below).

The unit contains a total of 5,861 ha (14,482 ac) on privately owned land. It is in portions of the Awehi, Halulu, Haua, Hauola, Kaa, Kahea, Kapoho, Kapua, Kuahua, Lopa, Maunalei, Naha, Nahoko, Palawai Basin, Poaiwa, Wahane, and Waiopa watersheds. The natural features include: Haalelepaakai (summit), Hookio Gulch, Kaaealii (summit), Kaapahu (summit), Kahinahina Ridge, Kamiki Ridge, Kaonohiokala Ridge, Kauiki (summit), Lanaihale (summit), Naio Gulch, Palea Ridge, Puhielelu Ridge, Puu Aalii, Puu Alii, Puu Kole, Puu Nene, Umi, Mauna o (summit), Waialala Gulch, and Wawaeku (summit).

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Table for Lanai D

Species	Abutilon eremitopetalum
1. 8–10 pop. guidelines.	X
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	X
10. Short-lived perennial–300/pop.	
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	
Notes	*Lower gulch slopes and gulch bottoms with red sandy soil and rock in lowland dry Erythrina sandwicensis-Diospyros ferrea.

Adenophorus periens	X*		X	X**		X			X			*Species is wide ranging.‡ **Historical on Lanai.
Bonamia menziesii	X*		X	X		X			X			*Species is wide ranging.‡
Brighamia rockii	X		X*	X*			X			X**		*Historical on Lanai. **Ledges on steep rocky cliffs (but not sea cliffs; the location is inland).
Cenchrus agrimonioides	X*		X**	X**		X			X			*Species is wide ranging.‡ **Historical on Lanai.
Centaurium sebaeoides	X*		X	X	X					X**		*Species is wide ranging.‡ **Dry ledges.
Clermontia oblongifolia ssp. mauiensis	X		X	X	X	X			X			

Ctenitis squamigera	X*		X		X	X	X	X		X				*Species is wide ranging.‡
Cyanea grimesiana ssp. grimesiana	X*		X		X	X				X			X**	*Species is wide ranging.‡ **Rocky or steep slopes of stream banks.
Cyanea lobata	X		X*		X*					X			X**	*Historical on Lanai. **Gulches.
Cyanea macrostegia ssp. gibsonii	X*	X			X	X	X		X					*Not enough suitable habitat for 8-10.
Cyrtandra munroi	X		X		X	X	X			X				
Diellia erecta	X*		X**		X**		X			X				*Species is wide ranging.‡ **Historical on Lanai.
Diplazium molokaiense	X*		X**		X**		X			X				*Species is wide ranging.‡ **Historical on Lanai.

Gahnia lanaiensis	X*	X			X	X	X			X		X			*Species is wide ranging.‡
Hedyotis mannii	X		X		X	X				X			X*		*Dark, narrow, rocky gulch walls or steep stream banks in wet forest.
Hedyotis schlechtendahliana var. remyi	X	X			X	X				X			X*		*Windswept ridges.
Hesperomannia arborescens	X*		X**		X**		X		X						*Species is wide ranging.‡ **Historical on Lanai.
Hibiscus brackenridgei	X*		X		X		X			X					*Species is wide ranging.‡
Isodendrion pyrifolium	X		X*		X*		X			X					*Historical on Lanai.
Labordia tinifolia var. lanaiensis	X*	X			X	X	X		X						*Species is wide ranging.‡
Melicope munroi	X*			X	X	X	X		X						*Species is wide ranging.‡

Neraudia sericea	X		X*		X		X					*Historical on Lanai.
Solanum incompletum	X		X*		X		X					*Historical on Lanai.
Spermolepis hawaiiensis	X*		X		X	X		X				*Species is wide ranging.‡
Tetramolopium remyi	X			X	X	X				X*		*Red sandy loam soil in dry Dodonaea viscosa-Heteropogon contortus communities.
Vigna o-wahuensis	X*		X		X	X	X		X			*Species is wide ranging.‡
Viola lanaiensis	X*	X			X	X	X		X		X	*Species is wide ranging.‡

BILLING CODE 4310–55–C

Lanai E

The proposed unit Lanai E (units E1, E2, and E3) provides unoccupied habitat for one species, *Bidens micrantha* ssp. *kalealaha.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai E below).

The unit cluster contains a total of 162 ha (400 ac) on privately owned land. It is contained in the Palawai Basin watershed. The natural features include: in E1, Kapohaku Gulch; in E2, Waiakaiole Gulch and Waipaa Gulch; and in E3, Palikoae Gulch.

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Table for Lanai E

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Bidens micrantha ssp. kalealaha	X		X*		X*					X			X**		*Historical on Lanai. **Gulches or gulch slopes.

BILLING CODE 4310–55–C

Lanai F

The proposed unit Lanai F provides unoccupied habitat for one species, *Hibiscus brackenridgei.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai F below).

The unit contains a total of 331 ha (818 ac) on privately owned land. It is completely within the Paliamano watershed. The natural features include: Paliamano Gulch.

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Table for Lanai F

Species	Notes
	*Species is wide ranging.‡
Hibiscus brackenridgei	X*
1. 8–10 pop. guidelines.	
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	
7. Species with variable habitats.	X
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	
14. Hybridization is possible.	

BILLING CODE 4310–55–C

Lanai G

The proposed unit Lanai G provides unoccupied habitat for one species, *Portulaca sclerocarpa*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Lanai G below).

The unit contains a total of 151 ha (373 ac) on privately owned land. It is bounded on the west by Anapuka watershed and on the east by Manele watershed. The natural features include: Huawai Bay, Kaluakoi Point, and the western portion of Kapihua Bay.

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Table for Lanai G

Species	Notes
	*Species is wide ranging.‡ **Exposed ledges with thin soil in coastal areas.
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	
Portulaca sclerocarpa	

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Lanai H

The proposed unit Lanai H provides occupied habitat for one species, *Portulaca sclerocarpa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Lanai, and provides habitat to support one or more of the 8 to 10 populations of 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species (see the discussion of conservation requirements in Section D) (see Table Lanai H below).

The unit contains a total of 1 ha (2 ac) on privately owned land. The natural features include: Poopoo Islet.

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Table for Lanai H

Species	Notes
Portulaca sclerocarpa	*Species is wide ranging.‡‡ **Exposed ledges with thin soil in coastal areas.
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	

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Key for Tables Lanai A–H

‡Not all suitable habitat is proposed to be designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self-perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.
2. Island endemic.
3. Multi-island species with current locations on other islands.
4. Multi-island species with no current locations on other islands.
5. Current locations do not necessarily represent viable populations with the required number of mature individuals.
6. Several current locations may be affected by one naturally occurring, catastrophic event.
7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.
8. Not all currently occupied habitat was determined to be essential to the recovery of the species.
9. Life history, long-lived perennial—100 mature, reproducing individuals needed per population.
10. Life history, short-lived perennial—300 mature, reproducing individuals needed per population.
11. Life history, annual—500 mature, reproducing individuals needed per population.
12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.
13. Species has extremely restricted, specific habitat requirements.
14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out, do not destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14 as if a species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion. (See 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of one or more of the 32 plant species will require Section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to—

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral

ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits attributable to listing these 32 plant species, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with listing and with critical habitat designation. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and reopen the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threats to these listed species.

We are aware that the State of Hawaii and the private landowner is considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Lanai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.,* HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudency determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for the 32 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.,* hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(7) The methodology we might use, under section 4(b)(2) of the Act, in

determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

The comment period closes on May 3, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to the Field Supervisor, Pacific Islands Office (see **ADDRESSES**).

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* and *Cyanea lobata* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical habitat on Lanai before we can prepare and publish a notice of taxonomic changes for these two species. We plan to publish a taxonomic change notice for these two species after we have published the final critical habitat designations on Lanai. At that time we will evaluate the critical habitat designations on Lanai for these two species in light of any changes that may result from taxonomic changes in each species current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

a. We will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 32 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 32 PLANTS FROM THE ISLAND OF LANAI

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal activities potentially affected.[2].	Activities the Federal Government (*e.g.,* Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of the Interior) carries out or that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat)..	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected.[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destory habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal agencies in desgianted areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

b. We do not expect this rule to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 32 plant species since their listing between 1991 and 1999. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

d. OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities

because the lands which are proposed for critical habitat designation are solely owned by one landowner, Castle and Cooke Resorts, which is not a small entity as defined below. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 32 plant species were listed (between 1991 and 1999), there have been no formal consultations and seven informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. Two informal consultations were conducted on behalf of a private consulting firm, representing Maui Electric Company, who requested species lists for a proposed generating station at Miki Basin. None of the 32 species were reported from this area. Two informal consultations were conducted on behalf of the Federal Aviation Administration for airport navigational or improvement projects. None of the 32 species were reported from the project areas. One informal consultation was conducted on behalf of the U.S. Department of the Navy regarding nighttime, low-altitude terrain flights and confined area landings over and on limited areas of northwestern Lanai by the Marine Corps. None of the 32 species were reported from the project area. One informal consultation was conducted on behalf of NRCS for the construction of a wildlife exclusion fence and removal of alien ungulates from the enclosure, control of invasive alien plants within the enclosure, and outplanting of native plants in the Lanaihale watershed area. Thirty of the 32 species, *Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* were reported from the project area. Funding for the project will be provided by NRCS, through their Wildlife Habitat Incentive Program, to Castle and Cooke Resorts. One informal consultation was conducted on behalf of the Service, for the effects of fencing and replanting on listed and endangered species within Awehi Gulch. None of the 32 species were reported from the Awehi Gulch project area. In addition, we are in the early stages of defining a project area in the Lanaihale watershed for fencing and restoration of native vegetation. Funding for the project will be provided by the Service to Castle and Cooke Resorts, in partnership with the State Department of Land and Natural Resources.

We have determined that Maui Electric Company is not a small entity because it is not an independent non-profit organization, small governmental jurisdiction, nor a small business. The Federal Aviation Administration, U.S. Department of the Navy, and NRCS are not small entities. The informal consultations on the Lanaihale watershed area project and the Awehi Gulch project indirectly affected or concerned the major landowner on Lanai, Castle and Cooke Resorts. We have determined that Castle and Cooke Resorts is not a small entity because it is not a small retail and service business with less than $5 million in annual sales nor is it a small agricultural business with annual sales less than $750,000.

We concurred with NRCS's determination that the Lanaihale watershed area project, as proposed, and the only project in which any of the plant species at issue were reported in, was not likely to adversely affect listed species. At this time, only the Lanaihale watershed area project is ongoing. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Lanai.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because all but one of the proposed critical habitat areas are occupied by at least one species. Other than the Federally funded habitat restoration projects in the Lanaihale watershed area, we are aware of relatively few activities in the proposed critical habitat areas for these 32 plants that have Federal involvement, and thus, would require consultation for on-going projects. As mentioned above, currently we have conducted only seven informal consultations under section 7 on Lanai, and only one consultation involved any of the 32 species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Lanai, all of the proposed designations are on private land under one landowner. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. The majority of this land (about 71 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 27 percent of this land is within the State Agricultural District, approximately less than one percent is within the State Urban District and approximately less than one percent is within the State Rural District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and would likely affect only the major landowner on the island (who is not a small entity), within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would be federal funds, permits, or authorizations in these coastal areas.

Lands that are within the State Rural District are primarily located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require federal funds, permits, or authorizations in these coastal areas.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these 32 species from Lanai, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measure included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner, and because as discussed above, we do not believe there will be a substantial number of small entities affected by Act's consultation requirements.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations.

In summary, as stated above, this proposed rule would not affect small entities because all of the designations are on lands under one landownership. The landowner is not a small entity and, therefore, this proposed rule would not affect a substantial number of small entities and would not result in a significant economic effect on a substantial number of small entities. Most of this private land within the

proposed designation is currently being used for recreational or conservation purposes, and therefore, not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels, all under one ownership, and, therefore, would not affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect the single landowner. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, or should landownership change on the island of Lanai, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 32 species from Lanai in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 32 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because only 4 of 8 areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 32 plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of

information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 32 plant species. Therefore, designation of critical habitat for these 32 species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Marigold Zoll, Christa Russell, Michelle Stephens, and Gregory Koob (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Abutilon eremitopetalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* under ''FLOWERING PLANTS'' and *Adenophorus periens, Ctenitis squamigera, Diellia erecta,* and *Diplazium molokaiense* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Abutilon eremitopetalum	none	U.S.A (HI)	Malvaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha*.	Kookoolau	U.S.A (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bonamia menziesii	none	U.S.A (HI)	Convolvulaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Brighamia rockii	Pua ala	U.S.A (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Cenchrus agromonioides	Kamanomano (=sandbur, agrimony).	U.S.A (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides	Awiwi	U.S.A (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis*.	Oha wai	U.S.A (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A (HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea lobata	Haha	U.S.A (HI)	Campanulaceae	E	467	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Cyanea macrostegia ssp. gibsonii.	none	U.S.A. (HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyperus trachysanthos	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.96(a)	(NA)
*	*	*	*	*	*		*
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Gahnia lanaiensis	none	U.S.A. (HI)	Cyperaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis sclechtendahliana var. *remyi*.	Kopa	U.S.A. (HI)	Rubiaceae	E	441	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	none	U.S.A. (HI)	Asteraceae	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Labordia tinifolia var. *lanaiensis*.	Kamakahala	U.S.A. (HI)	Loganiaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Melicope munroi	Alani	U.S.A. (HI)	Rutaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	none	U.S.A. (HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Portulaca sclerocarpa	Poe	U.S.A. (HI)	Portulacaceae	E	432	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Solanum incompletum	Popolo ku mai	U.S.A. (HI)	Solanaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis	none	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Tetramalopium remyi	none	U.S.A. (HI)	Asteraceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	none	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Viola lanaiensis	none	U.S.A. (HI)	Violaceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
Diplazium molokiaense ..	none	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*	*	*

3. Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), and 67 FR 4072 (January 28, 2002) is proposed to be further amended as follows:

a. Revise the heading of paragraph (a) to read ''Critical habitat unit descriptions and maps by State'';

b. Revise the heading of paragraph (b) to read ''All other critical habitat unit descriptions and maps by Family'';

c. Revise the introductory text of paragraph (a)(1)(i);

d. Add paragraph (a)(1)(i)(E);

e. Revise paragraph (a)(1)(ii).

The revised and added text reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

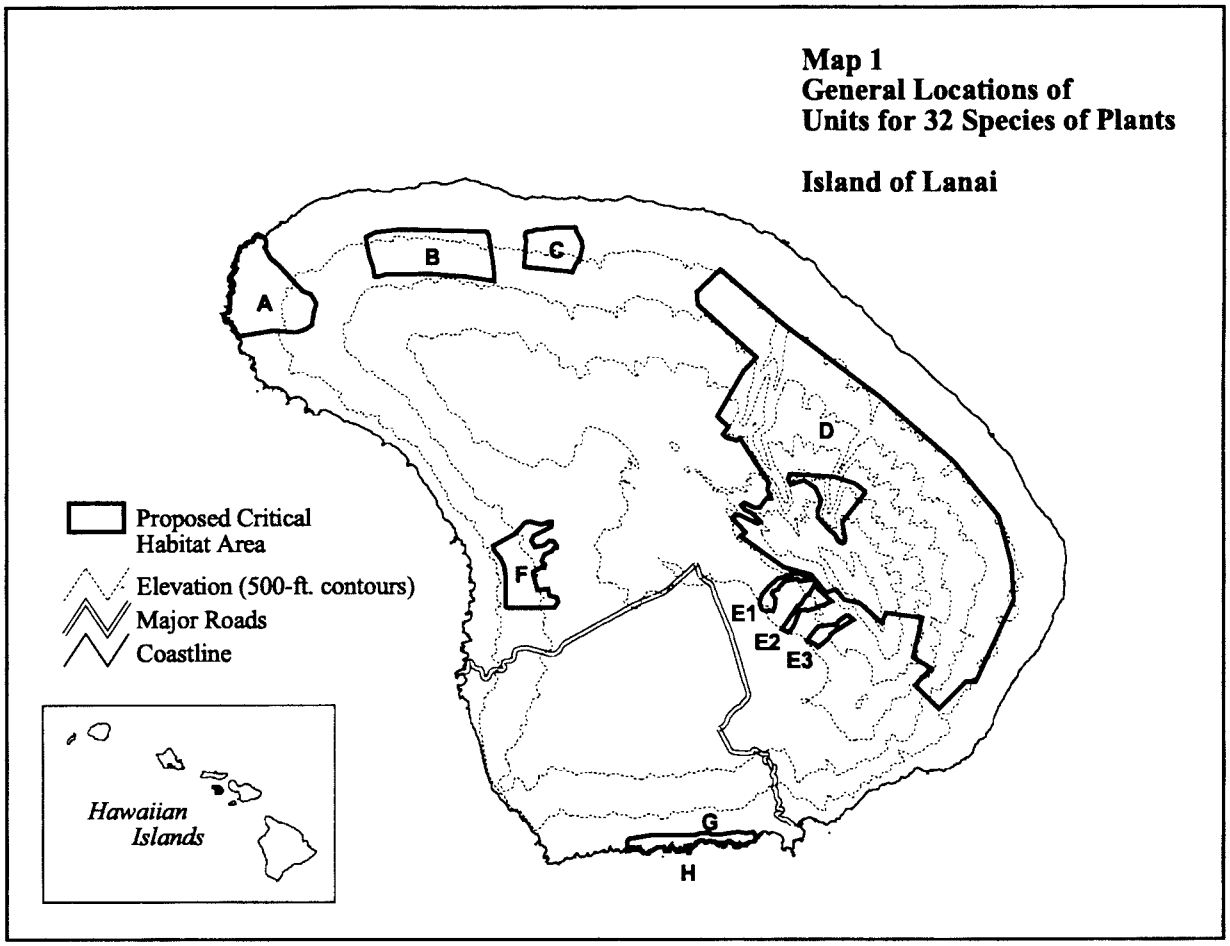
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing man-made features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraph (a)(1)(ii)(E) of this section and therefore, are not included in the critical habitat designations.

* * * * *

(E) *Lanai.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the eight critical habitats units designated on the island of Lanai.

(*1*) **Note:** Map 1—Index map follows:

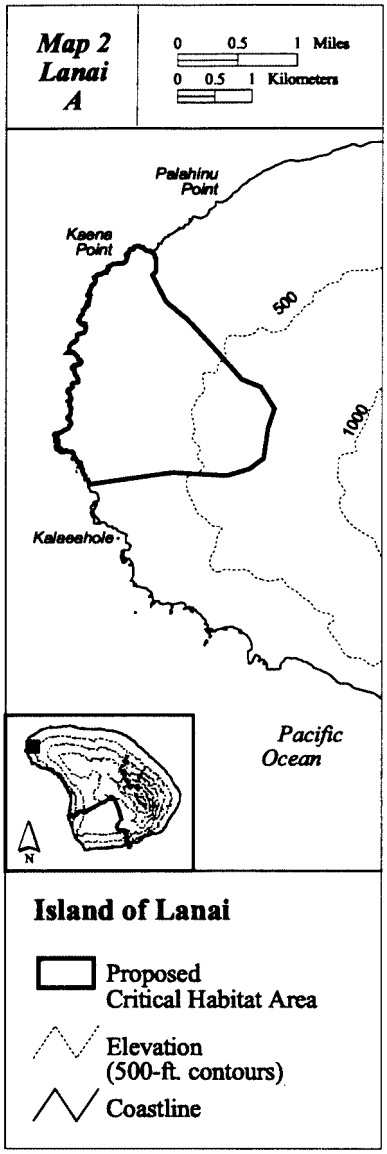


(*2*) Lanai A (574 ha; 1,418 ac).

(*i*) Unit consists of the following 17 boundary points and the intermediate coastline: 702882, 2313787; 702921, 2313674; 702928, 2313512; 702871, 2313459; 703058, 2313104; 703357, 2312863; 703811, 2312361; 704081, 2312052; 704342, 2311956; 704525, 2311656; 704439, 2311405; 704381,

2310990; 704197, 2310846; 703888, 2310749; 703155, 2310797; 702024, 2310634; 702882, 2313787.

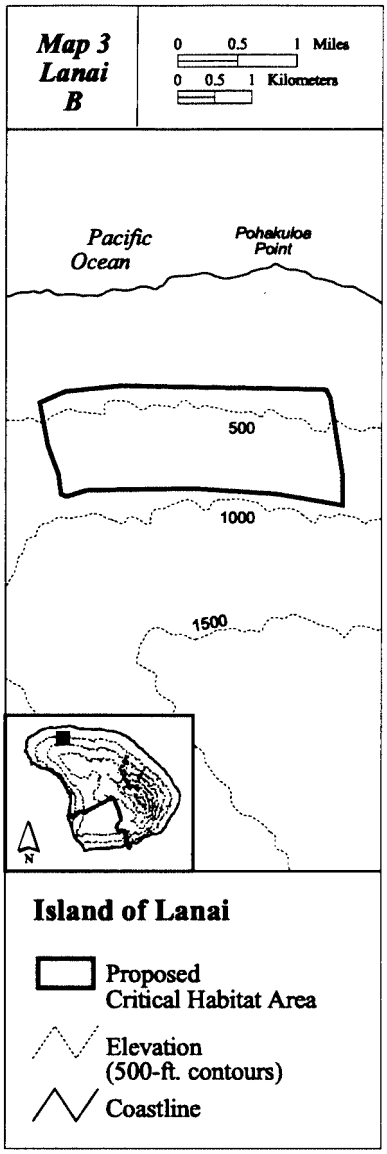
(*ii*) **Note:** Map 2 follows:



(*3*) Lanai B (551 ha; 1,363 ac).

(*i*) Unit consists of the following 15 boundary points: 706438, 2313925; 707201, 2314002; 709962, 2313947; 710017, 2313829; 710177, 2312823; 710191, 2312372; 709303, 2312524; 708179, 2312600; 706722, 2312579; 706452, 2312496; 706382, 2312524; 706348, 2312801; 706202, 2313190; 706091, 2313773; 706438, 2313925.

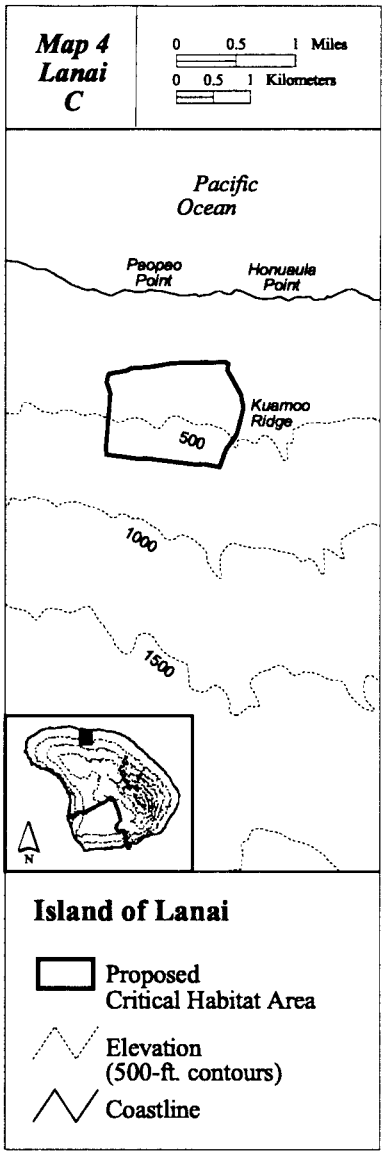
(*ii*) **Note:** Map 3 follows:



(*4*) Lanai C (222 ha; 549 ac).

(*i*) Unit consists of the following 22 boundary points: 711188, 2313923; 711429, 2313965; 711487, 2314003; 711749, 2314015; 712049, 2314065; 712768, 2314082; 712814, 2314057; 712797, 2313974; 712980, 2313641; 713013, 2313458; 712922, 2313100; 712777, 2312897; 712693, 2312660; 712477, 2312701; 712377, 2312693; 711683, 2312780; 711596, 2312768; 711159, 2312834; 711147, 2312926; 711209, 2313662; 711163, 2313815; 711188, 2313923.

(*ii*) **Note:** Map 4 follows:



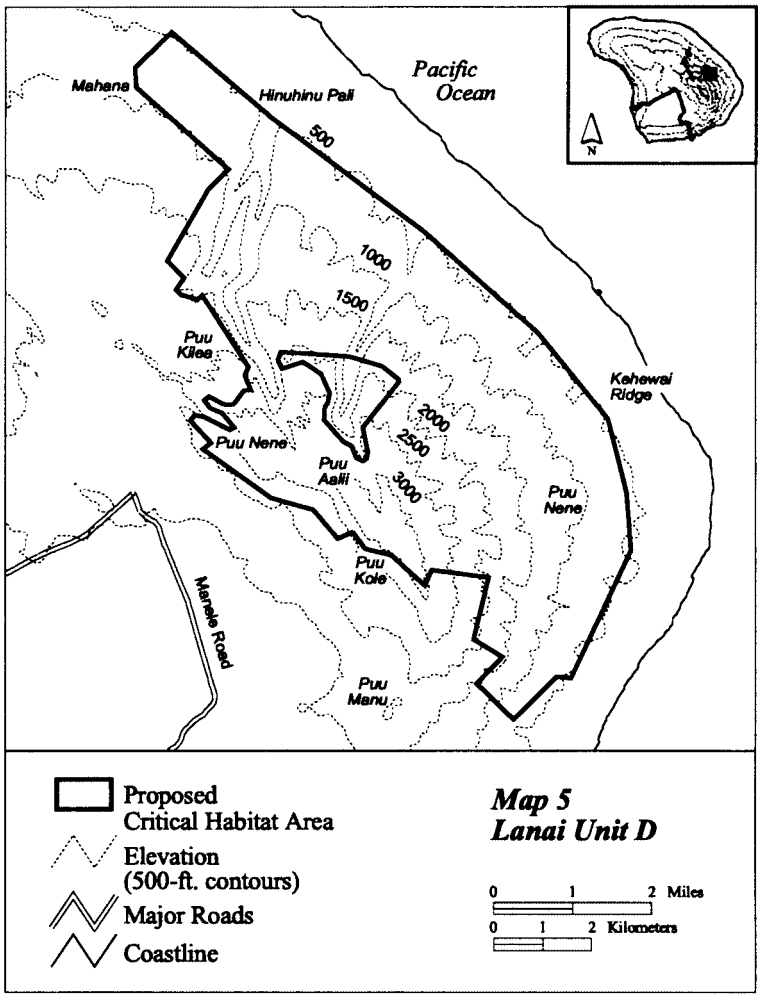
(*5*) Lanai D (5861 ha; 14,482 ac).

(*i*) Unit consists of the following 50 boundary points: 721080, 2302560; 720773, 2302431; 720277, 2303011; 719410, 2303246; 718032, 2304246; 718198, 2304371; 717783, 2304820; 717871, 2304936; 718055, 2304902; 718572, 2304638; 718670, 2304691; 718422, 2304982; 718181, 2305085; 718055, 2305246; 718157, 2305319; 718468, 2305154; 718652, 2305154; 718870, 2305453; 719006, 2305448; 718885, 2305755; 718957, 2305935; 718018, 2307384; 717926, 2307299; 717586, 2307403; 717484, 2307510; 717654, 2307744; 717302, 2308086; 718137, 2309521; 718547, 2309943; 716674, 2311623; 716648, 2312011; 717399, 2312731; 719438, 2310984; 722501, 2308704; 724829, 2306647; 726262, 2304867; 726648, 2303344; 726728, 2302198; 725517, 2299595; 725216, 2299615; 724348, 2298741; 723596, 2299480; 724115, 2300023; 723526, 2300379; 723832, 2301639;

722680, 2301793; 722544, 2301470; 721858, 2302099; 721339, 2302216; 721080, 2302560.

(*ii*) Excluding one area as follows: Bounded by the following 20 boundary points (218 ha; 539 ac): 722030, 2305656; 721281, 2304684; 721384, 2304179; 721361, 2304053; 721278, 2303995; 721137, 2304078; 721051, 2304305; 720895, 2304397; 720500, 2304833; 720511, 2305106; 720570, 2305199; 720608, 2305397; 720431, 2305786; 720064, 2306027; 719647, 2305891; 719553, 2306068; 719613, 2306239; 721002, 2306152; 721675, 2305940; 722030, 2305656.

(*iii*) **Note:** Map 5 follows:



(*6*) Lanai E1 (53 ha; 132 ac).

(*i*) Unit consists of the following 21 boundary points: 718727, 2301883; 718642, 2302092; 718720, 2302377; 718928, 2302637; 719228, 2302896; 719550, 2302974; 719799, 2303078; 719975, 2303021; 720193, 2302917; 720261, 2302858; 719948, 2302788; 719846, 2302865; 719474, 2302802; 719277, 2302635; 719253, 2302561; 719078, 2302494; 719042, 2302419; 719144, 2302231; 719136, 2302009; 719078, 2301859; 718727, 2301883.

(*ii*) **Note:** See Map 6.

(*7*) Lanai E2 (60 ha; 148 ac).

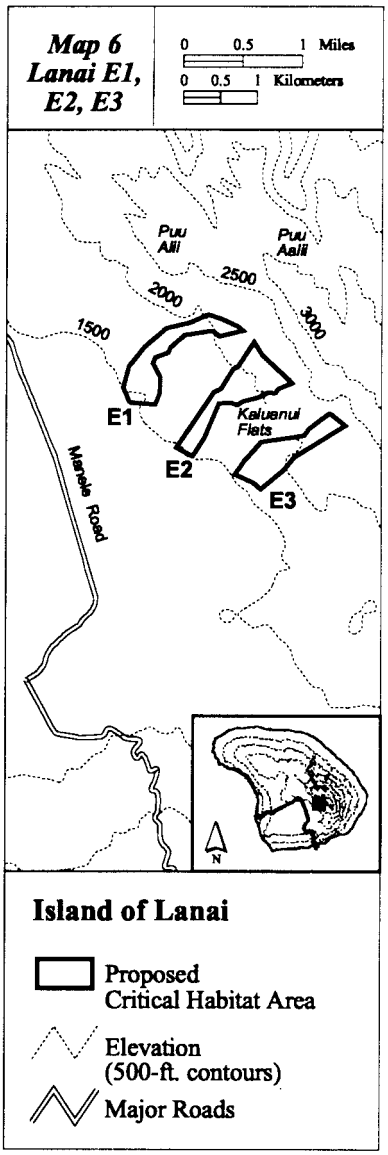
(*i*) Unit consists of the following 19 boundary points: 719586, 2301160; 719361, 2301274; 719868, 2302031; 719968, 2302070; 720134, 2302344; 720198, 2302369; 720411, 2302710; 720524, 2302530; 720933, 2302146; 720741, 2302073; 720699, 2302012; 720600, 2302026; 720464, 2301954; 720259, 2301901; 720187, 2301857; 720106, 2301890; 719937, 2301876; 719749, 2301413; 719586, 2301160.

(*ii*) **Note:** See Map 6.

(*8*) Lanai E3 (49 ha; 120 ac).

(*i*) Unit consists of the following 12 boundary points: 721435, 2301743; 721647, 2301574; 720952, 2301142; 720824, 2300969; 720507, 2300707; 720411, 2300796; 720164, 2300917; 720283, 2301104; 720513, 2301353; 721094, 2301439; 721161, 2301532; 721435, 2301743.

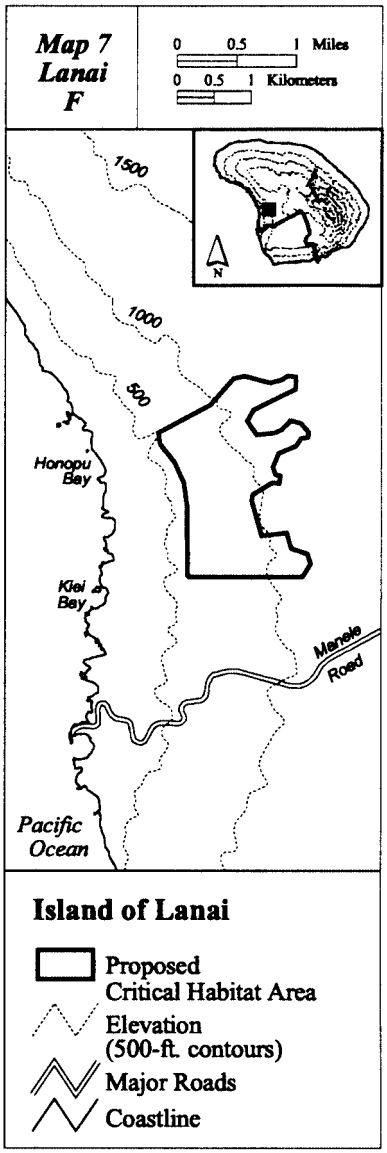
(*ii*) **Note:** Map 6 follows:



(*9*) Lanai F (331 ha; 818 ac).

(*i*) Unit consists of the following 41 boundary points: 710563, 2301975; 710554, 2302948; 710511, 2303264; 710389, 2303545; 710194, 2303783; 710165, 2303941; 710864, 2304323; 711181, 2304676; 711332, 2304712; 711678, 2304619; 711836, 2304655; 711905, 2304708; 712023, 2304705; 712031, 2304626; 712016, 2304532; 711452, 2304254; 711367, 2304099; 711491, 2303913; 711735, 2303942; 711836, 2303985; 711951, 2304107; 712084, 2304075; 712196, 2303949; 712190, 2303878; 712098, 2303861; 712028, 2303760; 711793, 2303659; 711717, 2303473; 711745, 2303370; 711818, 2303354; 711800, 2303250; 711710, 2303264; 711442, 2303104; 711423, 2303022; 711564, 2302535; 711901, 2302580; 711959, 2302361; 712182, 2302292; 712225, 2302156; 712115, 2301973; 710563, 2301975.

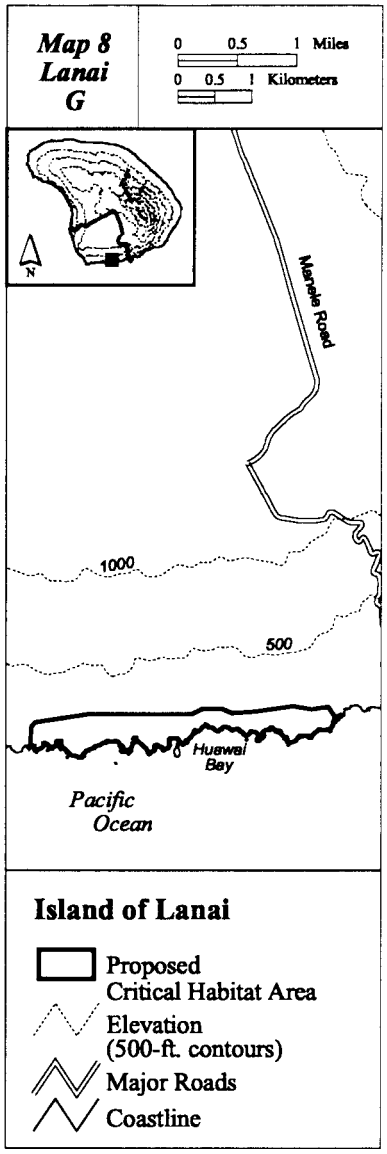
(*ii*) **Note:** Map 7 follows:



(*10*) Lanai G (151 ha; 373 ac).

(*i*) Unit consists of the following 16 boundary points and the intermediate coastline: 714418, 2294529; 714470, 2294599; 715200, 2294703; 716591, 2294709; 716742, 2294778; 716997, 2294784; 717130, 2294726; 717425, 2294738; 717964, 2294819; 718219, 2294773; 718433, 2294804; 718534, 2294660; 718604, 2294694; 718611, 2294686; 714408, 2294259; 714418, 2294529.

(*ii*) **Note:** Map 8 follows:



(*11*) Lanai H (1 ha; 2 ac).

(*i*) Unit consists of the entire offshore island, located at: 716393, 2294216.

(*ii*) **Note:** Map 9 follows:

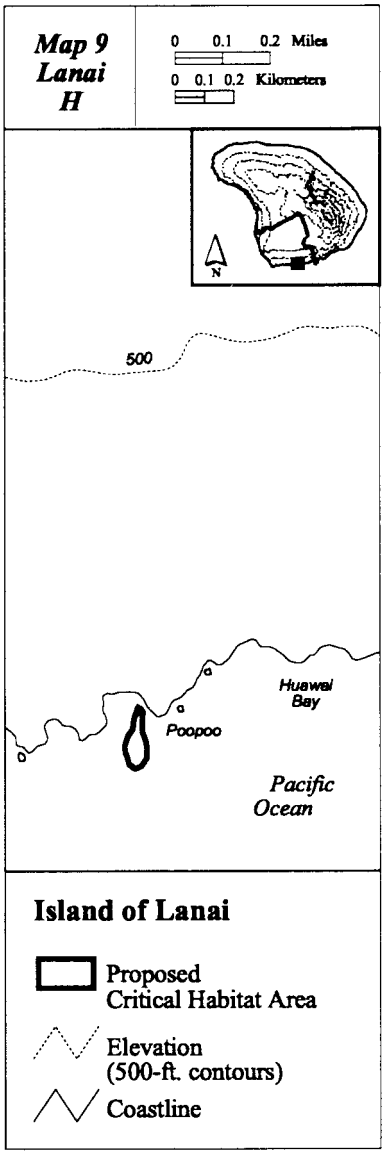


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TABLE (A)(1)(I)(E).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species occupied	Species unoccupied
Lanai A	*Hibiscus brackenridgei*	*Cyperus trachysanthos*.
Lanai B	*Tetramolopium remyi*.	
Lanai C		*Sesbania tomentosa*.
Lanai D	*Abutilon eremitopetalum*, *Bonamia menziesii*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp *grimesiana*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyrtandra munroi*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Hibiscus brackenridgei*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, *Spermolepis hawaiiense*, *Tetramolopium remyi*, and *Viola lanaiensis*.	*Adenophorus periens*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Cyanea lobata*, *Diellia erecta*, *Diplazium molokaiensis*, *Hesperomannia arborescens*, *Isodendrion pyrifolium*, *Neraudia sericea*, *Solanum incompletum*, and *Vigna o-wahuensis*.
Lanai E		*Bidens micrantha* ssp. *kalealaha*.
Lanai F		*Hibiscus brackenridgei*.
Lanai G		*Portulaca sclerocarpa*.
Lanai H	*Portulaca sclerocarpa*.	

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Spermolepis hawaiiensis* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis*, or shrublands dominated by *Dodonaea viscosa*, with one or more of the following native plant species: *Nestegis sandwicensis*, *Nesoluma polynesicum*, *Psydrax odorata*, or *Rauvolfia sandwicensis*; and

(*2*) Elevations between 402 and 711 m (1,319 and 2,332 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Lanai E, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Bidens micrantha* ssp. *kalealaha* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in dry *Dodonaea viscosa* shrubland; and

(*2*) Elevations between 409 and 771 m (1,342 and 2,529 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hesperomannia arborescens* on Lanai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes or ridges in lowland mesic or wet forest containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Myrsine sandwicensis*, *Isachne distichophylla*, *Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp., *Dicranopteris linearis*, *Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp., *Cheirodendron* spp., or *Freycinetia arborea*; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Lanai B and D, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Tetramolopium remyi* on Lanai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Red, sandy, loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities with one or more of the following associated native species: *Bidens mauiensis*, *Waltheria indica*, *Wikstroemia oahuensis*, or *Lipochaeta lavarum*; and

(*2*) Elevations between 65 and 485 m (213 and 1,591 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Brighamia rockii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sparsely vegetated ledges of steep, rocky, dry cliffs, with native grasses, sedges, herbs or shrubs; and

(*2*) Elevations between 119 and 756 m (390 and 2,480 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha wai)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch bottoms in mesic forests; and

(*2*) Elevations between 700 and 1,032 m (2,296 and 3,385 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa*, or rocky or steep slopes of stream banks, with one or more of the following associated native plants: *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis*, *Psychotria* spp., or *Xylosma* spp.; and

(*2*) Elevations between 667 and 1,032 m (2,188 and 3,385 ft).

Family Campanulaceae: *Cyanea lobata* (haha)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyanea lobata* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulches in mesic to wet forest and shrubland containing one or more of the following associated native plant species: *Freycinetia arborea*, *Touchardia latifolia*, *Morinda trimera*, *Metrosideros polymorpha*, *Clermontia kakeana*, *Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus*, *Peperomia* spp., *Touchardia latifolia*, *Freycinetia arborea*, *Pleomele* spp., or *Athyrium* spp.; and

(*2*) Elevations between 664 and 1,032 m (2,178 and 3,385 ft).

Family Campanulaceae: *Cyanea macrostegia* ssp. *gibsonii* (haha)

Lanai D, identified in (a)(1)(i)(E), constitutes critical habitat for *Cyanea macrostegia* ssp. *gibsonii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Flat to moderate or steep slopes, on lower gulch slopes or gulch bottoms, at edges of streambanks in lowland wet *Metrosideros polymorpha* forest or *Diplopterygium pinnatum-Metrosideros polymorpha* shrubland with one or more of the following associated native plants: *Dicranopteris linearis*, *Perrottetia sandwicensis*, *Scaevola chamissoniana*, *Pipturus albidus*, *Antidesma platyphyllum*, *Cheirodendron trigynum*, *Freycinetia arborea*, *Psychotria* spp., *Cyrtandra* spp., *Broussaisia arguta*, *Clermontia* spp., *Dubautia* spp., *Hedyotis* spp., *Ilex anomala*, *Labordia* spp., *Melicope* spp., *Pneumatopteris sandwicensis*, or *Sadleria* spp.; and

(*2*) Elevations between 738 and 1,032 m (2,421 and 3,385 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Lanai D identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Bonamia menziesii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry *Nestegis sandwicensis-Diospyros* spp. forest or dry *Dodonea viscosa* shrubland with one or more of the following associated native plants: *Bobea* spp., *Nesoluma polynesicum*, *Erythrina sandwicensis*, *Rauvolfia sandwicensis*, *Metrosideros polymorpha*, *Psydrax odorata*, *Dienella sandwicensis*, *Diospyros sandwicensis*, *Hedyotis terminalis*, *Melicope* spp., *Myoporum sandwicense*, *Nestegis sandwicense*, *Pisonia* spp., *Pittosporum*

spp., *Pouteria sandwicensis*, or *Sapindus oahuensis*; and

(*2*) Elevations between 315 and 885 m (1,033 and 2,903 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Lanai A, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyperus trachysanthos* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* grassland with *Hibiscus tiliaceus*; and

(*2*) Elevations between 0 and 46 m (0 and 151 ft).

Family Cyperaceae: *Gahnia lanaiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Gahnia lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Flat to gentle ridgecrests in moist to wet clay in open areas or in moderate shade within lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland with one or more of the following associated native species: mat ferns, *Doodia* spp., *Odontosoria chinensis*, *Ilex anomala*, *Hedyotis terminalis*, *Sadleria* spp., *Coprosma* spp., *Lycopodium* spp., *Scaevola* spp., or *Styphelia tameiameiae*; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Lanai C, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Sesbania tomentosa* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs with one or more of the following associated native plant species: *Chamaesyce celastroides*, *Cluscuta sandwichiana*, *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, *Nama sandwicensis*, *Scaevola sericea*, *Sida fallax*, *Sporobolus virginicus*, *Vitex rotundifolia* or *Waltheria indica*; and

(*2*) Elevations between 44 and 221 m (144 and 725 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Lanai D, identified in the legal descriptions in (a)(1)(i)(E), constitutes critical habitat for *Vigna o-wahuensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest; and

(*2*) Elevations between 98 and 622 m (321 and 2,040 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Centaurium sebaeoides* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The dry ledges which may or may not contain *Hibiscus brackenridgei;* and

(*2*) Elevations between 39 and 331 m (128 and 1,086 ft).

Family Gesneriaceae: *Cyrtandra munroi* (haiwale)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cyrtandra munroi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops in rich, diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *Metrosiderospolymorpha* forest, with one or more of the following native plant species: *Diospyros sandwicensis*, *Bobea elatior*, *Myrsine lessertiana*, *Pipturus albidus*, *Pittosporum confertiflorum*, *Pleomele fernaldii*, *Sadleria cyatheoides*, *Scaevola chamissoniana*, *Xylosma hawaiiense*, *Cyrtandra grayii*, *Cyrtandra grayana Diplopterygium pinnatum*, *Hedyotis acuminata*, *Clermontia* spp., *Alyxia oliviformis*, *Coprosma* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Melicope* spp., *Perrottetia sandwicensis*, *Pouteria sandwicensis*, or *Psychotria* spp.; and

(*2*) Elevations between 667 and 1,016 m (2,188 and 3,332 ft).

Family Loganiaceae: *Labordia tinifolia* var. *lanaiensis* (kamakahala)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Labordia tinifolia* var. *lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in lowland mesic forest with one or more of the following associated native plant species: *Diospyros sandwicensis*, *Bobea elatior*, *Myrsine lessertiana*, *Pipturus albidus*, *Pittosporum confertiflorum*, *Pleomele fernaldii*, *Sadleria cyatheoides*, *Scaevola chamissoniana*, *Xylosma hawaiiense*, *Cyrtandra grayii*, *Cyrtandra grayana*, *Diplopterygium pinnatum*, *Hedyotis acuminata*, *Clermontia* spp., *Alyxia oliviformis*, *Coprosma* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Melicope* spp., *Perrottetia sandwicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Dicranopteris linearis*, or *Scaevola chamissoniana*; and

(*2*) Elevations between 558 and 1,013 m (1,830 and 3,323 ft).

Family Malvaceae: *Abutilon eremitopetalum* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Abutilon eremitopetalum* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open lowland dry *Erythrina sandwicensis* or *Diospyros ferrea* forest on moderately steep north-facing slopes on red sandy soil and rock with one or more of the following native plant species: *Psydrax odorata*, *Dodonaea viscosa*, *Nesoluma polynesicum*, *Rauvolfia sandwicensis*, *Sida fallax*, or *Wikstroemia* spp.; and

(*2*) Elevations between 108 and 660 m (354 and 2,165 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Lanai A, D and F, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Hibiscus brackenridgei* on Lanai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lowland dry to mesic forest and shrubland with one or more of the following associated native plant species: *Dodonea viscosa*, *Psydrax odorata*, *Eurya sandwicensis*, *Isachne distichophylla*, or *Sida fallax*; and

(*2*) Elevations between 0 and 645 m (0 and 2,116 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano (= sandbur, agrimony))

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Cenchrus agrimonioides* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in mesic *Metrosideros polymorpha* forest and shrubland; and

(*2*) Elevations between 583 and 878 m (1,912 and 2,880 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (poe)

Lanai G and H, identified in the legal descriptions in (a)(1)(i)(E), constitute critical habitat for *Portulaca sclerocarpa* on Lanai. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Exposed ledges in thin soil in coastal communities; and

(*2*) At elevations between 0 and 82 m (0 and 269 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hedyotis mannii* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dark, narrow, rocky gulch walls and steep stream banks in wet forests with one or more of the following associated native plant species: *Thelypteris sandwicensis*, *Sadleria* spp., *Cyrtandra grayii, Scaevola chamissoniana*, *Freycinetia arborea*, or *Carex meyenii*; and

(*2*) Elevations between 711 and 1,032 m (2,332 and 3,385 ft).

Family Rubiaceae: *Hedyotis schlechtendahliana* var. *remyi* (kopa)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Hedyotis schlechtendahliana* var. *remyi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Ridge crests in mesic windswept shrubland with a mixture of dominant plant taxa that may include *Metrosideros polymorpha*, *Dicranopteris linearis*, or *Styphelia tameiameiae* with one or more of the following associated native plant species: *Dodonaea viscosa*, *Odontosoria chinensis*, *Sadleria* spp., *Dubautia* spp., or *Myrsine* spp.; and

(*2*) Elevations between 558 and 1,032 m (1,830 and 3,385 ft).

Family Rutaceae: *Melicope munroi* (alani)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Melicope munroi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in lowland wet shrublands with one or more of the following associated native plant species: *Diplopterygium pinnatum*, *Dicranopteris linearis*, *Metrosideros polymorpha*, *Cheirodendron trigynum*, *Coprosma* spp., *Broussaisia arguta*, other *Melicope* spp., or *Machaerina angustifolia*; and

(*2*) Elevations between 701 and 1,032 m (2,299 and 3,385 ft).

Family Solanaceae: *Solanum incompletum* (popolo ku mai)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Solanum incompletum* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland with one or more of the following associated native plant species: *Heteropogon contortus*, *Lipochaeta* spp., or *Wikstroemia oahuensis*; and

(*2*) Elevations between 151 and 372 m (495 and 1,220 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Neraudia sericea* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat for *Neraudia sericea* are the habitat components provided by:

(*1*) Gulch slopes or gulch bottoms in dry-mesic or mesic forest containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Nestegis sandwicensis*, or *Dodonaea viscosa*; and

(*2*) Elevations between 693 and 869 m (2,273 and 2,850 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Isodendrion pyrifolium* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry shrubland with one or more of the following associated native plant species: *Dodonaea viscosa*, *Lipochaeta* spp., *Heteropogon contortus*, or *Wikstroemia oahuensis*; and

(*2*) Elevations between 132 and 574 m (433 and 1,883 ft).

Family Violaceae: *Viola lanaiensis* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Viola lanaiensis* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and decomposed rock substrate in open to shaded areas on moderate to steep slopes from lower gulches to ridgetops in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland with one or more of the following associated native plants: ferns and short windswept shrubs, *Scaevola chamissoniana*, *Hedyotis terminalis*, *Hedyotis centranthoides*, *Styphelia tameiameiae*, *Carex* spp., *Ilex anomala*, *Psychotria* spp., *Antidesma* spp., *Coprosma* spp., *Freycinetia arborea*, *Myrsine* spp., *Nestegis* spp., *Psychotria* spp., or *Xylosma* spp.; and

(*2*) Elevations between 639 and 1,032 m (2,096 and 3,385 ft).

(B) Ferns and Allies.

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Ctenitis squamigera* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forest understory in diverse mesic forest and scrubby mixed mesic forest with one or more of the following native plant species: *Nestegis sandwicensis*, *Coprosma* spp., *Sadleria* spp., *Selaginella* spp., *Carex meyenii*, *Blechnum occidentale*, *Pipturus* spp., *Melicope* spp., *Pneumatopteris sandwicensis*, *Pittosporum* spp., *Alyxia oliviformis*, *Freycinetia arborea*, *Antidesma* spp., *Cyrtandra* spp., *Peperomia* spp., *Myrsine* spp., *Psychotria* spp., *Metrosideros polymorpha*, *Syzygium sandwicensis*, *Wikstroemia* spp., *Microlepia* spp., *Doodia* spp., *Boehmeria grandis*, *Nephrolepis* spp., *Perrottetia sandwicensis*, or *Xylosma* spp.; and

(*2*) Elevations between 640 and 944 m (2,099 and 3,096 ft).

Family Aspleniaceae: *Diellia erecta* (NCN)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Diellia erecta* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Brown granular soil with leaf litter and occasional terrestrial moss on north facing slopes in deep shade on steep slopes or gulch bottoms in *Pisonia* spp. forest with one or more native grasses or ferns; and

(*2*) Elevations between 651 and 955 m (2,135 and 3,132 ft).

Family Aspleniaceae: Diplazium molokaiense (asplenium-leaved asplenium)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Diplazium molokaiense* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shady, damp places in wet forests; and

(*2*) Elevations between 737 and 1,032 m (2,417 and 3,385 ft).

Family Grammitidaceae: Adenophorus periens (pendant kihi fern)

Lanai D, identified in the legal description in (a)(1)(i)(E), constitutes critical habitat for *Adenophorus periens* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Riparian banks of streams in well-developed, closed canopy areas of deep shade or high humidity in *Metrosideros polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest with one or more of the following associated native plant species: *Machaerina angustifolia, Cheirodendron trigynum, Sadleria* spp., *Clermontia* spp., *Psychotria* spp., *Melicope* spp., *Freycinetia arborea, Broussaisia arguta, Syzygium sandwicensis,* or *Hedyotis terminalis;* and

(*2*) Elevations between 763 and 1,032 m (2,503 and 3,385 ft).

Dated: February 19, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Monday,
March 4, 2002

Part III

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA26

Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim rule.

SUMMARY: FinCEN, a bureau of the Treasury Department, is issuing regulations to implement the provision in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 that encourages information sharing among financial institutions for purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities.

DATES: This rule is effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Judith R. Starr, Chief Counsel (FinCEN), (703) 905–3590; William Langford, Senior Counsel for Financial Crimes, Office of the Assistant General Counsel (Enforcement), (202) 622–1932; or Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622–1976 (not toll-free numbers). Financial institutions with questions about their coverage or compliance obligations under this rule should contact their appropriate federal regulator.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001 (Public Law 107–56) (the Act). Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with developing regulations to implement these information-sharing provisions.

Section 314(b) of the Act permits financial institutions, upon providing notice to Treasury, to share information with one another in order to better identify and report to the federal government concerning activities that may involve money laundering or terrorist activities. This interim rule implements section 314(b). The Congress authorized financial institutions to share information to assist in the identification of suspected terrorists and money launderers only after providing notice to Treasury. The notice provision outlined below—a yearly certification to FinCEN that information will be shared and protected from inappropriate disclosure—combined with the requirement that any money laundering or terrorist activities uncovered be reported to FinCEN or other law enforcement, will allow for the sharing of information while protecting the privacy interests of customers of financial institutions.

Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking that solicits comments on proposed provisions that are identical to this interim rule, as well as proposed regulations to implement the provisions of section 314(a) the Act, which concerns enhanced cooperation between financial institutions and federal law enforcement agencies to detect terrorist and money laundering activities. Please refer to the notice of proposed rulemaking for instructions for submitting comments on the proposed provisions that are identical to this interim rule.

II. Analysis of the Interim Rule

A. General Definitions

Section 103.90—Definitions

As noted above, section 314(b) of the Act permits financial institutions, upon providing notice to Treasury, to share information with one another in order to identify and report to the federal government activities that may involve money laundering or terrorist activity. Although section 314 does not define ''money laundering'' or ''terrorist activity,'' each of these terms has well-established definitions. Accordingly, and consistent with the broad intent underlying section 314(b), section 103.90(a) defines ''money laundering'' to mean any activity described in section 1956 or 1957 of title 18, United States Code. Similarly, section 103.90(b) defines ''terrorist activity'' to mean an act of domestic terrorism or international terrorism as defined in section 2331 of title 18, United States Code.

B. Information Sharing Among Financial Institutions

Section 103.110—Voluntary Information Sharing Among Financial Institutions

The Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(b). Under the Bank Secrecy Act (BSA), which is concerned with information reporting to detect and prevent financial crimes, the term ''financial institution'' is defined broadly.[1] Unlike section 314(a), which involves financial institutions responding to requests for information from federal law enforcement agencies,[2] section 314(b) involves the sharing of information among financial institutions and raises issues concerning information privacy.[3] For these reasons, Treasury and FinCEN believe that it is appropriate to define the term ''financial institution'' for purposes of section 314(b) in a manner that is most likely to further the identification of terrorist and money laundering activities while minimizing the likelihood that information sharing will inappropriately intrude on the privacy interests of the customers of those institutions. Accordingly, section 103.110(a)(2) defines ''financial institution'' for purposes of section 314(b) to mean (1) a financial institution that is subject to SAR reporting that is not a money services business, which includes banks, savings associations, and credit unions; (2) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); (3) an issuer of traveler's checks or money orders, (4) a registered money transmitter, or (5) an operator of a credit card system that is not a money services business. Treasury and FinCEN specifically request comment, in connection with the proposed rule published elsewhere in this issue of the **Federal Register**, concerning whether these entities should be included within the definition for purposes of section 314(b) of the Act and regulation section 103.110, and whether the definition should be expanded to include other categories of BSA financial institutions.

[1] See 31 U.S.C. 5312(a)(2).

[2] Treasury and FinCEN are proposing to apply section 314(a) to all BSA financial institutions. See the proposed rule implementing section 314(a) published elsewhere in this issue of the **Federal Register**.

[3] See Act sections 314(b) and (c), which provide protections from federal and State prohibitions on the disclosure of information to financial institutions that engage in information sharing consistent with the requirements of section 314(b) and its implementing regulations.

Section 103.110(b) provides that upon providing the appropriate certification to Treasury, as described below, a financial institution may share information with other financial institutions regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve money laundering or terrorist activity. Because associations of such financial institutions can enhance the sharing of information among its members, this section also permits these associations to participate in the information sharing process.

Prior to engaging in information sharing, a financial institution or association of financial institutions must submit to FinCEN a certification described in new Appendix B to 31 CFR part 103, that confirms: the name of the financial institution or association of financial institutions; that the financial institution is a financial institution as defined in section 103.110(a), or in the case of an association, that the association's members that intend to engage in information sharing are financial institutions as defined in section 103.110(a); that the institution or association will maintain adequate procedures to protect the security and confidentiality of such information; that the institution or association will not use any shared information for any purpose other than as authorized in section 103.110; and the identity of a contact person at the financial institution or association for matters pertaining to information sharing.

To streamline the certification process, FinCEN has established a special page on its existing Internet website, *http://www.treas.gov/fincen*, where financial institutions can enter the appropriate information. If a financial institution or association does not have access to the Internet, the certification may be mailed to FinCEN at the address specified in the rule.

By requiring notice to Treasury before information is shared among financial institutions, Congress has injected Treasury into what would otherwise be a purely private communication. The statute did not indicate clearly whether prior notice to Treasury was required before each individual communication or whether a general notice would be sufficient. After considering both the need for flexibility for financial institutions as well as the need to ensure that the right to share information under this section is not being used improperly, Treasury and FinCEN determined that the certification should be effective for a one-year period beginning on the date of the certification. A re-certification, provided to FinCEN in the same manner, is required if a financial institution or association intends to continue to share information. An annual certification will help Treasury determine which financial institutions are sharing information, and it will reinforce the need for financial institutions to protect information shared under this section. Treasury and FinCEN balanced the minimal burden associated with completing the brief electronic or paper certification against its role in protecting the privacy interests of customers of financial institutions.

Section 103.110(c) requires each financial institution or association of financial institutions that engages in the sharing of information to maintain adequate procedures to protect the security and confidentiality of such information. This section also provides that information received by a financial institution or association of financial institutions pursuant to this section shall only be used for identifying and reporting on activities that may involve terrorist or money laundering activities, or determining whether to close or maintain an account, or to engage in a transaction. A financial institution that fails to comply with these restrictions on the use of shared information may have its certification revoked or suspended. *See* 103.110(g).

Section 103.110(d) provides that a financial institution or association of financial institutions that engages in the sharing of information and that complies with sections 103.110(b) and (c) shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is the subject of such sharing.

Section 103.110(e) provides a means for financial institutions to voluntarily report information to law enforcement concerning suspicious transactions that may relate to money laundering or terrorist activity that may come to the financial institution's attention as a result of discussions with other financial institutions, or otherwise. In order to accord the highest priority to suspected terrorist activity, a financial institution should report such information to FinCEN by calling the Financial Institutions Hotline (1–866–556–3974). The purpose of the Financial Institutions Hotline is to facilitate the immediate transmittal of this information to law enforcement. Financial institutions identifying other suspicious transactions should report such transactions by promptly filing a SAR in accordance with applicable regulations, even if they provide information over the Financial Institutions Hotline. The Financial Institutions Hotline is intended to provide to law enforcement and other authorized recipients of SAR information the essence of the suspicious activity in an expedited fashion. Use of the Financial Institutions Hotline is voluntary and does not affect an institution's responsibility to file a SAR in accordance with applicable regulations.

Section 103.110(f) clarifies that voluntary reporting under section 103.110 does not relieve a financial institution from any obligation it may have to file a Suspicious Activity Report pursuant to a regulatory requirement, or to otherwise directly contact a federal agency concerning individuals, entities, or organizations suspected of engaging in money laundering or terrorist activities.

Section 103.110(g) provides that a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution under this section if the regulator or FinCEN determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Treasury and FinCEN believe this provision is necessary to preclude further participation in information sharing under the authority of section 103.110 by a financial information that fails to accord confidentiality to shared information, or uses that information for purposes other than as permitted by section 103.110(c). A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under this section during the period of such revocation or suspension.

III. Administrative Procedure Act

In Executive Order 13224 (September 23, 2001), the President found that the continuing and immediate threat of further attacks on the United States constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. The interim rule implements statutory provisions intended to prevent terrorist activity by

uncovering and disrupting the financing of terrorist acts. In light of the exigent circumstances described in Executive Order 13224, Treasury has determined, pursuant to 5 U.S.C. 553(b), that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reason, pursuant to 5 U.S.C. 553(d), it has been determined that there is good cause for the interim rule to become effective immediately upon publication.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply to this interim rule because a notice of proposed rulemaking is not required under 5 U.S.C. 553 or any other law.

V. Paperwork Reduction Act

The requirement in section 103.110(b)(2), concerning notification to FinCEN that a financial institution that intends to engage in information sharing, and the accompanying certification in Appendix B to 31 CFR part 103, do not constitute a collection of information for purposes of the Paperwork Reduction Act. *See* 5 CFR 1320.3(h)(1).

The collection of information contained in section 103.110(e), concerning reports to the federal government as a result of information sharing among financial institutions, will necessarily involve the reporting of a subset of information currently contained in a Suspicious Activity Report (SAR). SAR reporting has been previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned OMB Control No. 1506–0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Executive Order 12866

This interim rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Dated: February 26, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Add new subpart H to part 103 to read as follows:

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

Sec.

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity described in 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

§ 103.100 Information sharing with federal law enforcement agencies. [Reserved]

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply;

(2) The term financial institution means any financial institution described in 31 U.S.C. 5312(a)(2) that:

(i) Is subject to a suspicious activity reporting requirement of subpart B of this part and is not a money services business, as defined in § 103.11(uu);

(ii) Is a broker or dealer in securities, as defined in § 103.11(f);

(iii) Is an issuer of traveler's checks or money orders, as defined in § 103.11(uu)(3);

(iv) Is a money transmitter, as defined in § 103.11(uu)(5), and is required to register as such pursuant to § 103.41; or

(v) Is an operator of a credit card system and is not a money services business, as defined in § 103.11(uu); and

(3) The term *association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Information sharing among financial institutions*—(1) *In general.* Subject to paragraphs (b)(2) and (g) of this section, a financial institution or an association of financial institutions may engage in the sharing of information with any other financial institution (as defined in paragraph (a)(2) of this section) or association of financial institutions (as defined in paragraph (a)(3) of this section) regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve possible money laundering or terrorist activities.

(2) *Notice requirement*—(i) *Certification.* A financial institution or association of financial institutions that intends to engage in the sharing of information as described in paragraph (b)(1) of this section shall submit to FinCEN a certification described in Appendix B of this part.

(ii) *Address.* Completed certifications may be submitted to FinCEN:

(A) By accessing FinCEN's Internet website, *http://www.treas.gov/fincen,* and entering the appropriate information as directed; or

(B) If a financial institution does not have Internet access, by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

(iii) *One year duration of certification.* Each certification provided pursuant to paragraph (b)(2)(i) of this section shall be effective for the one year period beginning on the date of the certification. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new certification.

(c) *Security and confidentiality of information*—(1) *Procedures required.* Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information.

(2) *Use of information.* Information received by a financial institution or association of financial institutions pursuant to this section shall not be used for any purpose other than:

(i) Detecting, identifying and reporting on activities that may involve terrorist or money laundering activities; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(d) *Safe harbor from certain liability*—(1) *In general.* A financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in of such sharing.

(2) *Limitation.* Paragraph (d)(1) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraph (b) or (c) of this section.

(e) *Information sharing between financial institutions and the federal government*—(1) *Terrorist activity.* If, as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in terrorist activity, such information should be reported to FinCEN:

(i) By calling the toll-free Financial Institutions Hotline (1–866–556–3974); and

(ii) If appropriate, by filing a Suspicious Activity Report pursuant to subpart B of this part or other applicable regulations.

(2) *Money laundering.* If as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in money laundering, such information should generally be reported by filing a Suspicious Activity Report in accordance with subpart B of this part or other applicable regulations. If circumstances indicate a need for the expedited reporting of this information, a financial institution may use the Financial Institutions Hotline (1–866–556–3974).

(f) *No limitation on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise directly contact a federal agency concerning individuals or entities suspected of engaging in money laundering or terrorist activities.

(g) *Revocation or suspension of certification*—(1) *Authority of federal regulator or FinCEN.* Notwithstanding any other provision of this section, a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution pursuant to paragraph (b)(2) of this section if the concerned federal regulator or FinCEN, as appropriate, determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Nothing in this paragraph (g)(1) shall be construed to affect the authority of any federal regulator with respect to any financial institution.

(2) *Effect of revocation or suspension.* A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under the authority of this section during the period of such revocation or suspension.

3. The Appendix to part 103 is redesignated as Appendix A to part 103 and the heading is revised to read as follows:

Appendix A to Part 103—Administrative Rulings

* * * * *

4. Appendix B is added to part 103 to read as follows:

Appendix B to Part 103—Certification for Purposes of Section 314(b) of the USA Patriot Act and 31 CFR 103.110

BILLING CODE 4810-02-P

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____

_____

_____

_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____

TITLE: _____

MAILING ADDRESS: _____

_____

_____

E-MAIL ADDRESS: _____

TELEPHONE NUMBER: _____

FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

Executed on this _____ day of _____, 200____.

[FR Doc. 02–5006 Filed 3–1–02; 8:45 am]
BILLING CODE 4810–02–C

Federal Register

Monday,
March 4, 2002

Part III

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA26

Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim rule.

SUMMARY: FinCEN, a bureau of the Treasury Department, is issuing regulations to implement the provision in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 that encourages information sharing among financial institutions for purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities.

DATES: This rule is effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Judith R. Starr, Chief Counsel (FinCEN), (703) 905–3590; William Langford, Senior Counsel for Financial Crimes, Office of the Assistant General Counsel (Enforcement), (202) 622–1932; or Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622–1976 (not toll-free numbers). Financial institutions with questions about their coverage or compliance obligations under this rule should contact their appropriate federal regulator.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001 (Public Law 107–56) (the Act). Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with developing regulations to implement these information-sharing provisions.

Section 314(b) of the Act permits financial institutions, upon providing notice to Treasury, to share information with one another in order to better identify and report to the federal government concerning activities that may involve money laundering or terrorist activities. This interim rule implements section 314(b). The Congress authorized financial institutions to share information to assist in the identification of suspected terrorists and money launderers only after providing notice to Treasury. The notice provision outlined below—a yearly certification to FinCEN that information will be shared and protected from inappropriate disclosure—combined with the requirement that any money laundering or terrorist activities uncovered be reported to FinCEN or other law enforcement, will allow for the sharing of information while protecting the privacy interests of customers of financial institutions.

Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking that solicits comments on proposed provisions that are identical to this interim rule, as well as proposed regulations to implement the provisions of section 314(a) the Act, which concerns enhanced cooperation between financial institutions and federal law enforcement agencies to detect terrorist and money laundering activities. Please refer to the notice of proposed rulemaking for instructions for submitting comments on the proposed provisions that are identical to this interim rule.

II. Analysis of the Interim Rule

A. General Definitions

Section 103.90—Definitions

As noted above, section 314(b) of the Act permits financial institutions, upon providing notice to Treasury, to share information with one another in order to identify and report to the federal government activities that may involve money laundering or terrorist activity. Although section 314 does not define ''money laundering'' or ''terrorist activity,'' each of these terms has well-established definitions. Accordingly, and consistent with the broad intent underlying section 314(b), section 103.90(a) defines ''money laundering'' to mean any activity described in section 1956 or 1957 of title 18, United States Code. Similarly, section 103.90(b) defines ''terrorist activity'' to mean an act of domestic terrorism or international terrorism as defined in section 2331 of title 18, United States Code.

B. Information Sharing Among Financial Institutions

Section 103.110—Voluntary Information Sharing Among Financial Institutions

The Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(b). Under the Bank Secrecy Act (BSA), which is concerned with information reporting to detect and prevent financial crimes, the term ''financial institution'' is defined broadly.[1] Unlike section 314(a), which involves financial institutions responding to requests for information from federal law enforcement agencies,[2] section 314(b) involves the sharing of information among financial institutions and raises issues concerning information privacy.[3] For these reasons, Treasury and FinCEN believe that it is appropriate to define the term ''financial institution'' for purposes of section 314(b) in a manner that is most likely to further the identification of terrorist and money laundering activities while minimizing the likelihood that information sharing will inappropriately intrude on the privacy interests of the customers of those institutions. Accordingly, section 103.110(a)(2) defines ''financial institution'' for purposes of section 314(b) to mean (1) a financial institution that is subject to SAR reporting that is not a money services business, which includes banks, savings associations, and credit unions; (2) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); (3) an issuer of traveler's checks or money orders, (4) a registered money transmitter, or (5) an operator of a credit card system that is not a money services business. Treasury and FinCEN specifically request comment, in connection with the proposed rule published elsewhere in this issue of the **Federal Register**, concerning whether these entities should be included within the definition for purposes of section 314(b) of the Act and regulation section 103.110, and whether the definition should be expanded to include other categories of BSA financial institutions.

[1] See 31 U.S.C. 5312(a)(2).

[2] Treasury and FinCEN are proposing to apply section 314(a) to all BSA financial institutions. See the proposed rule implementing section 314(a) published elsewhere in this issue of the **Federal Register**.

[3] See Act sections 314(b) and (c), which provide protections from federal and State prohibitions on the disclosure of information to financial institutions that engage in information sharing consistent with the requirements of section 314(b) and its implementing regulations.

Section 103.110(b) provides that upon providing the appropriate certification to Treasury, as described below, a financial institution may share information with other financial institutions regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve money laundering or terrorist activity. Because associations of such financial institutions can enhance the sharing of information among its members, this section also permits these associations to participate in the information sharing process.

Prior to engaging in information sharing, a financial institution or association of financial institutions must submit to FinCEN a certification described in new Appendix B to 31 CFR part 103, that confirms: the name of the financial institution or association of financial institutions; that the financial institution is a financial institution as defined in section 103.110(a), or in the case of an association, that the association's members that intend to engage in information sharing are financial institutions as defined in section 103.110(a); that the institution or association will maintain adequate procedures to protect the security and confidentiality of such information; that the institution or association will not use any shared information for any purpose other than as authorized in section 103.110; and the identity of a contact person at the financial institution or association for matters pertaining to information sharing.

To streamline the certification process, FinCEN has established a special page on its existing Internet website, *http://www.treas.gov/fincen*, where financial institutions can enter the appropriate information. If a financial institution or association does not have access to the Internet, the certification may be mailed to FinCEN at the address specified in the rule.

By requiring notice to Treasury before information is shared among financial institutions, Congress has injected Treasury into what would otherwise be a purely private communication. The statute did not indicate clearly whether prior notice to Treasury was required before each individual communication or whether a general notice would be sufficient. After considering both the need for flexibility for financial institutions as well as the need to ensure that the right to share information under this section is not being used improperly, Treasury and FinCEN determined that the certification should be effective for a one-year period beginning on the date of the certification. A re-certification, provided to FinCEN in the same manner, is required if a financial institution or association intends to continue to share information. An annual certification will help Treasury determine which financial institutions are sharing information, and it will reinforce the need for financial institutions to protect information shared under this section. Treasury and FinCEN balanced the minimal burden associated with completing the brief electronic or paper certification against its role in protecting the privacy interests of customers of financial institutions.

Section 103.110(c) requires each financial institution or association of financial institutions that engages in the sharing of information to maintain adequate procedures to protect the security and confidentiality of such information. This section also provides that information received by a financial institution or association of financial institutions pursuant to this section shall only be used for identifying and reporting on activities that may involve terrorist or money laundering activities, or determining whether to close or maintain an account, or to engage in a transaction. A financial institution that fails to comply with these restrictions on the use of shared information may have its certification revoked or suspended. *See* 103.110(g).

Section 103.110(d) provides that a financial institution or association of financial institutions that engages in the sharing of information and that complies with sections 103.110(b) and (c) shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is the subject of such sharing.

Section 103.110(e) provides a means for financial institutions to voluntarily report information to law enforcement concerning suspicious transactions that may relate to money laundering or terrorist activity that may come to the financial institution's attention as a result of discussions with other financial institutions, or otherwise. In order to accord the highest priority to suspected terrorist activity, a financial institution should report such information to FinCEN by calling the Financial Institutions Hotline (1–866–556–3974). The purpose of the Financial Institutions Hotline is to facilitate the immediate transmittal of this information to law enforcement. Financial institutions identifying other suspicious transactions should report such transactions by promptly filing a SAR in accordance with applicable regulations, even if they provide information over the Financial Institutions Hotline. The Financial Institutions Hotline is intended to provide to law enforcement and other authorized recipients of SAR information the essence of the suspicious activity in an expedited fashion. Use of the Financial Institutions Hotline is voluntary and does not affect an institution's responsibility to file a SAR in accordance with applicable regulations.

Section 103.110(f) clarifies that voluntary reporting under section 103.110 does not relieve a financial institution from any obligation it may have to file a Suspicious Activity Report pursuant to a regulatory requirement, or to otherwise directly contact a federal agency concerning individuals, entities, or organizations suspected of engaging in money laundering or terrorist activities.

Section 103.110(g) provides that a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution under this section if the regulator or FinCEN determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Treasury and FinCEN believe this provision is necessary to preclude further participation in information sharing under the authority of section 103.110 by a financial information that fails to accord confidentiality to shared information, or uses that information for purposes other than as permitted by section 103.110(c). A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under this section during the period of such revocation or suspension.

III. Administrative Procedure Act

In Executive Order 13224 (September 23, 2001), the President found that the continuing and immediate threat of further attacks on the United States constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. The interim rule implements statutory provisions intended to prevent terrorist activity by

uncovering and disrupting the financing of terrorist acts. In light of the exigent circumstances described in Executive Order 13224, Treasury has determined, pursuant to 5 U.S.C. 553(b), that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reason, pursuant to 5 U.S.C. 553(d), it has been determined that there is good cause for the interim rule to become effective immediately upon publication.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply to this interim rule because a notice of proposed rulemaking is not required under 5 U.S.C. 553 or any other law.

V. Paperwork Reduction Act

The requirement in section 103.110(b)(2), concerning notification to FinCEN that a financial institution that intends to engage in information sharing, and the accompanying certification in Appendix B to 31 CFR part 103, do not constitute a collection of information for purposes of the Paperwork Reduction Act. *See* 5 CFR 1320.3(h)(1).

The collection of information contained in section 103.110(e), concerning reports to the federal government as a result of information sharing among financial institutions, will necessarily involve the reporting of a subset of information currently contained in a Suspicious Activity Report (SAR). SAR reporting has been previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned OMB Control No. 1506–0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Executive Order 12866

This interim rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Dated: February 26, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Add new subpart H to part 103 to read as follows:

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

Sec.

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity described in 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

§ 103.100 Information sharing with federal law enforcement agencies. [Reserved]

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply;

(2) The term financial institution means any financial institution described in 31 U.S.C. 5312(a)(2) that:

(i) Is subject to a suspicious activity reporting requirement of subpart B of this part and is not a money services business, as defined in § 103.11(uu);

(ii) Is a broker or dealer in securities, as defined in § 103.11(f);

(iii) Is an issuer of traveler's checks or money orders, as defined in § 103.11(uu)(3);

(iv) Is a money transmitter, as defined in § 103.11(uu)(5), and is required to register as such pursuant to § 103.41; or

(v) Is an operator of a credit card system and is not a money services business, as defined in § 103.11(uu); and

(3) The term *association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Information sharing among financial institutions*—(1) *In general.* Subject to paragraphs (b)(2) and (g) of this section, a financial institution or an association of financial institutions may engage in the sharing of information with any other financial institution (as defined in paragraph (a)(2) of this section) or association of financial institutions (as defined in paragraph (a)(3) of this section) regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve possible money laundering or terrorist activities.

(2) *Notice requirement*—(i) *Certification.* A financial institution or association of financial institutions that intends to engage in the sharing of information as described in paragraph (b)(1) of this section shall submit to FinCEN a certification described in Appendix B of this part.

(ii) *Address.* Completed certifications may be submitted to FinCEN:

(A) By accessing FinCEN's Internet website, *http://www.treas.gov/fincen,* and entering the appropriate information as directed; or

(B) If a financial institution does not have Internet access, by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

(iii) *One year duration of certification.* Each certification provided pursuant to paragraph (b)(2)(i) of this section shall be effective for the one year period beginning on the date of the certification. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new certification.

(c) *Security and confidentiality of information*—(1) *Procedures required.* Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information.

(2) *Use of information.* Information received by a financial institution or association of financial institutions pursuant to this section shall not be used for any purpose other than:

(i) Detecting, identifying and reporting on activities that may involve terrorist or money laundering activities; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(d) *Safe harbor from certain liability*—(1) *In general.* A financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in of such sharing.

(2) *Limitation.* Paragraph (d)(1) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraph (b) or (c) of this section.

(e) *Information sharing between financial institutions and the federal government*—(1) *Terrorist activity.* If, as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in terrorist activity, such information should be reported to FinCEN:

(i) By calling the toll-free Financial Institutions Hotline (1–866–556–3974); and

(ii) If appropriate, by filing a Suspicious Activity Report pursuant to subpart B of this part or other applicable regulations.

(2) *Money laundering.* If as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in money laundering, such information should generally be reported by filing a Suspicious Activity Report in accordance with subpart B of this part or other applicable regulations. If circumstances indicate a need for the expedited reporting of this information, a financial institution may use the Financial Institutions Hotline (1–866–556–3974).

(f) *No limitation on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise directly contact a federal agency concerning individuals or entities suspected of engaging in money laundering or terrorist activities.

(g) *Revocation or suspension of certification*—(1) *Authority of federal regulator or FinCEN.* Notwithstanding any other provision of this section, a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution pursuant to paragraph (b)(2) of this section if the concerned federal regulator or FinCEN, as appropriate, determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Nothing in this paragraph (g)(1) shall be construed to affect the authority of any federal regulator with respect to any financial institution.

(2) *Effect of revocation or suspension.* A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under the authority of this section during the period of such revocation or suspension.

3. The Appendix to part 103 is redesignated as Appendix A to part 103 and the heading is revised to read as follows:

Appendix A to Part 103—Administrative Rulings

* * * * *

4. Appendix B is added to part 103 to read as follows:

Appendix B to Part 103—Certification for Purposes of Section 314(b) of the USA Patriot Act and 31 CFR 103.110

BILLING CODE 4810-02-P

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____

_____

_____

_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____

TITLE: _____

MAILING ADDRESS: _____

_____

_____

E-MAIL ADDRESS: _____

TELEPHONE NUMBER: _____

FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

Executed on this _____ day of _____, 200____.

[FR Doc. 02–5006 Filed 3–1–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA26, 1506–AA27

Financial Crimes Enforcement Network; Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, a bureau of the Treasury Department, is proposing regulations to implement provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 that encourage information sharing among financial institutions and federal government law enforcement agencies to identify, prevent, and deter money laundering and terrorist activity.

DATES: Written comments on all aspects of the proposed rule must be received on or before April 3, 2002.

ADDRESSES: Written comments should be submitted to: Special Information Sharing—Section 314 Comments, PO Box 1618, Vienna, VA 22183–1618. Comments may also be submitted by electronic mail to the following Internet address: regcomments@fincen.treas.gov with the caption in the body of the text, ''Attention: Proposed Rule—Special Information Sharing—Section 314.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Judith R. Starr, Chief Counsel (FinCEN), (703) 905–3590; William Langford, Senior Counsel for Financial Crimes, Office of the Assistant General Counsel (Enforcement), (202) 622–1932; or Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622–1976 (not toll-free numbers). Financial institutions with questions about their coverage or compliance obligations under this rule should contact their appropriate federal regulator.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001 (Public Law 107–56) (the Act). Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with developing regulations to implement these information-sharing provisions.

Section 314(a) of the Act requires regulations encouraging cooperation between financial institutions and the federal government through the exchange of information regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities. Section 314(b), on the other hand, permits financial institutions, upon providing notice to Treasury, to share information with one another in order to better identify and report to the federal government concerning activities that may involve money laundering or terrorist activities.

First, utilizing the existing and future communication resources of the Financial Crimes Enforcement Network (FinCEN), this proposed rule seeks to create a communication network linking federal law enforcement with the financial industry so that vital information relating to suspected terrorists and money launderers can be exchanged quickly and without compromising pending investigations. FinCEN, a bureau of Treasury, already maintains a government-wide data access service to assist federal, state, and local law enforcement agencies in the detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes. Under the proposed rule, federal law enforcement will have the ability to locate accounts of, and transactions conducted by, suspected terrorists or money launderers by providing their names and identifying information to FinCEN, which will then communicate that information to financial institutions so that a check of accounts and transactions can be made. If matches are found, law enforcement can then follow up with the financial institution directly. The rule is intended to formalize and streamline the information sharing and reporting process that the federal government undertook following the attacks of September 11, 2001, by permitting FinCEN to serve as a conduit for information sharing between federal law enforcement agencies and financial institutions.

FinCEN is uniquely positioned to serve as the communication gateway under section 314(a). Indeed, it already provides considerable information relating to financial crimes to the financial community in a variety of ways. It issues Suspicious Activity Report (SAR) Bulletins, which digest information drawn from SARs to illustrate indicia of suspicious activity, and SAR Activity Reviews, which present trends, tips and issues in suspicious activity reporting. FinCEN issues advisories to alert the financial community to specific activities and areas that merit enhanced scrutiny, including countries with lax anti-money laundering controls. In addition, FinCEN provides industry guidance on its website. The financial services industry also makes substantial use of FinCEN's regulatory helpline.

Second, Congress authorized the sharing of information among financial institutions relating to suspected terrorists and money launderers only after providing notice to Treasury, for the purpose of identifying and reporting to the federal government such activities. The notice provision outlined below—a yearly certification to FinCEN that information will be shared and protected from inappropriate disclosure—combined with the requirement that any money laundering or terrorist activities uncovered be reported to FinCEN or other law enforcement, will allow for the sharing of information while protecting the privacy interests of customers of financial institutions. Given the importance of this information sharing provision, Treasury is issuing simultaneously an interim rule implementing section 314(b), which is published elsewhere in this issue of the **Federal Register**. The regulatory text of the interim rule and this proposed rule are identical with respect to section 314(b).

Nothing in this proposed rule affects the existing authority of federal agencies to obtain information directly from financial institutions, as authorized by law or regulation, pursuant to their own established and approved procedures. Moreover, nothing in the proposed rule affects a financial institution's obligation to file a SAR, or its duty to contact directly a federal agency concerning individuals or entities suspected of engaging in terrorist acts or money laundering activities.

II. Analysis of the Proposed Rule

A. General Definitions

Section 103.90—Definitions

As noted above, section 314 authorizes the sharing of information between the federal government and financial institutions, and among financial institutions, for the purpose of identifying possible money laundering or terrorist activities. Although section 314 does not define ''money laundering'' or ''terrorist activity,'' each of these terms has well-established definitions. Accordingly, and consistent with the broad intent underlying section 314, section 103.90(a) defines ''money laundering'' to mean any activity described in section 1956 or 1957 of title 18, United States Code. Similarly, section 103.90(b) defines ''terrorist activity'' to mean an act of domestic terrorism or international terrorism as defined in section 2331 of title 18, United States Code.

B. Information Sharing with Federal Law Enforcement Agencies

Section 103.100—Information Sharing with Federal Law Enforcement Agencies

Under section 314(a) of the Act, Treasury is required to establish procedures to encourage information sharing between financial institutions and federal government authorities concerning accounts and transactions that may be linked to terrorist activity or involve money laundering. Treasury also may require each financial institution to designate persons to serve as contact points to facilitate this information exchange.

Section 103.100 is intended to fulfill Treasury's statutory mandate in section 314(a) in a way that will provide a streamlined method for federal law enforcement agencies to uncover money laundering and terrorist financing while minimizing burdens on financial institutions and intrusions on individual privacy.

The Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(a). Under the Bank Secrecy Act (BSA), which, like section 314(a), is concerned with information reporting to detect and prevent financial crimes, the term ''financial institution'' is defined broadly.[1] The purpose of section 314(a) is to facilitate the exchange of information between federal law enforcement agencies and financial institutions concerning individuals, entities, and organizations that are engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist acts or money laundering activities. Consistent with this purpose, section 103.100(a) defines ''financial institution'' as any financial institution described in 31 U.S.C. 5312(a)(2).

Section 103.100(b) through (d) establish a mechanism for federal law enforcement agencies investigating money laundering and terrorist activity to use FinCEN as a means of exchanging information with financial institutions about suspected terrorists and persons engaged in money laundering.

Section 103.100(b) provides that FinCEN, acting on behalf of a federal law enforcement agency investigating money laundering or terrorist activity, may request any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, specified individuals, entities, or organizations. FinCEN and the federal law enforcement agency seeking the information will determine the appropriate time period for the records search, depending on the circumstances of the underlying investigation, which will be communicated to financial institutions by FinCEN with the request. Treasury and FinCEN specifically solicit comments from financial institutions concerning the length of time they maintain and/or archive records concerning closed accounts and past transactions, and their ability to access these records for purposes of this section.

Section 103.100(c) makes clear that the federal law enforcement agency for which FinCEN makes the request is responsible for determining that the request meets the statutory requirement that it relate to individuals, entities, or organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist or money laundering activities. Section 103.100(c) requires the requesting federal law enforcement agency to provide FinCEN with a written certification, in such manner and form as FinCEN may prescribe, that each individual, entity, or organization about which the agency is seeking information is engaged in, or reasonably suspected based on credible evidence of engaging in, money laundering or terrorist activity. FinCEN believes this certification requirement establishes sufficient accountability in the requesting federal law enforcement agencies to ensure that such agencies use the authority of the rule in the manner contemplated by the statute.

Under the proposed rule, FinCEN has the authority to request information regarding suspected terrorists and money launderers from any financial institution as defined in the BSA notwithstanding that FinCEN has not yet extended BSA regulations to all such financial institutions. While all financial institutions should be on notice that FinCEN may contact them for information after this rules becomes effective, as a practical matter not all financial institutions will receive requests for information. First, because FinCEN does not currently regulate all BSA financial institutions, it does not have contact information effectively to reach large numbers of unregulated financial institutions. The BSA authorizes FinCEN to require financial institutions to file with FinCEN reports of suspicious financial transactions, known as Suspicious Activity Reports (SARs). To date, FinCEN has extended SAR reporting only to a subset of ''financial institutions'' as defined in the BSA. In addition, regulations issued by the federal regulator of certain financial institutions require SAR reporting to FinCEN. Currently, banks, savings associations, credit unions, certain money services businesses (MSBs),[2] and certain registered securities brokers and dealers [3] are required to file SARs. In addition, the Act requires Treasury to extend the SAR reporting requirement to all registered securities brokers and dealers by July 1, 2002.[4] Accordingly, the initial implementation of section 103.100 generally will involve those financial institutions that are subject to SAR reporting. However, other financial institutions may also be requested to provide information to FinCEN on a case-by-case basis. Implementation of section 103.100 will in the future be expanded to include additional

[1] *See* 31 U.S.C. 5312(a)(2). See also section 314(d)(2) of the Act (requiring the Secretary of the Treasury to distribute certain semiannual reports to financial institutions and incorporating the BSA definition of ''financial institution'') and 18 U.S.C. 2339B(g)(2) (criminal penalties for providing support or resources to foreign terrorists and incorporating by reference the BSA definition of ''financial institution'').

[2] All money services businesses (MSBs) are required to register with the Treasury Department except persons that are MSBs solely because they serve as agents of another MSB; issuers, sellers, and redeemers of stored value; and the U.S. Postal Service. Issuers, sellers, and redeemers of traveler's checks and money orders and money transmitters are subject to the MSB SAR requirement; check cashers and currency dealers and exchangers are not subject to the MSB SAR requirement.

[3] Although FinCEN's existing BSA regulations requiring the filing of SARs do not apply generally to securities brokers and dealers, those securities brokers and dealers that are affiliates or subsidiaries of banks or bank holding companies have been required to report suspicious transactions by virtue of the application to them of rules issued by the federal bank supervisory agencies.

[4] *See* Act section 356. FinCEN has issued proposed amendments to the BSA regulations to cover all securities brokers and dealers 66 FR 67669 (Dec. 31, 2001).

categories of financial institutions as FinCEN develops an enhanced communication network with the larger financial community. Moreover, Treasury and FinCEN expect that many requests for information will be targeted to specific subsets of financial institutions based on information already known to law enforcement agencies. For example, if a law enforcement agency knows that an individual suspected of financing terrorism operates in a particular geographic area, or utilizes particular types of financial institutions, FinCEN would target its request for information accordingly.

Section 103.100(d) sets forth the obligation of financial institutions to comply with a request from FinCEN. This section provides that upon receiving the request, a financial institution shall search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, any individual, entity, or organization named in FinCEN's request. The financial institution's search must cover accounts maintained and transactions engaged in during the time period specified in the request.

If a financial institution identifies a matching account or transaction, it must report as soon as possible to FinCEN the identity of the relevant individual, entity, or organization, together with an identification of the account or the type of transaction (such as wire transfer), as well as all identifying information (such as date of birth, address, Social Security number, passport number, etc.) provided by the individual, entity, or organization in connection with the transaction or establishment of the account. This information should be sent to FinCEN via e-mail to *patriot@fincen.treas.gov* or, if the financial institution does not have access to e-mail, by calling the toll-free the Financial Institutions Hotline (1–866–556–3974), or as FinCEN may otherwise prescribe in the information request.

Although the records search required by section 103.100(d) is retrospective, Treasury and FinCEN expect that financial institutions will use the information provided by FinCEN to report to FinCEN concerning any named individual, entity, or organization that subsequently establishes an account or engages in a transaction.

Nothing in the rule requires a financial institution to take any action, or to decline to take any action, with respect to an existing account or past transaction with, or to decline to establish a new account for, or to engage in a transaction with, any individual, entity, or organization specified in a request from FinCEN. Indeed, in the interests of law enforcement, the proposed rule prohibits a financial institution from taking any action that could alert an individual, entity or organization that it has been identified by a federal law enforcement agency as engaged in, or suspected of engaging in, terrorist acts, the financing of terrorist acts, or money laundering. Treasury and FinCEN are acutely aware and are highly appreciative of the desire of financial institutions not to knowingly facilitate terrorism or money laundering, and recognize that this desire may at times be in tension with the need not to alert persons that have been identified in a request from FinCEN. If, for example, a financial institution believes that its failure to close an account in connection with an individual, entity, or organization named in a request from FinCEN could facilitate terrorism or money laundering, it may be appropriate for the financial institution to advise FinCEN, which will refer the matter to the concerned federal law enforcement agency. Ultimately, however, the decision whether to close an account or decline a transaction is solely that of the concerned financial institution.

Section 314(a) clearly contemplates that information provided by the federal government to financial institutions will be used only for the purposes of that section. Accordingly, the rule also requires financial institutions to maintain adequate procedures to protect the security and confidentiality of information contained in requests from FinCEN. Maintaining the confidentiality of information sent from law enforcement is vital to the success of this information sharing provision and is important to maintaining the privacy interests of the customers of financial institutions.

Section 103.100(e) requires a financial institution, upon a request from FinCEN, to designate one person who will receive requests for information from FinCEN and to provide FinCEN with that person's mailing address, e-mail address, telephone number, and facsimile number. When requested, a financial institution may provide this information through FinCEN's website, *http://www.treas.gov/fincen*, and enter the information as directed, or by sending the information on company letterhead to: FinCEN, PO Box 39, Mail Stop 500, Vienna, VA 22183. A financial institution is not required to provide this information to FinCEN until requested.

Section 103.100(f) clarifies the relationship between a financial institution's obligations under the rule and the Right to Financial Privacy Act (RFPA). RFPA generally provides that ''no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution'' except with the customer's consent or through an administrative or judicial subpoena or a search warrant, or in response to a formal written request. 12 U.S.C. 3402. To obtain access to the records, there must be reason to believe that the records sought are relevant to a legitimate law enforcement inquiry. 12 U.S.C. 3407.

There are several bases on which an information request and a responsive disclosure of information required by the rule are exempt from the requirements of RFPA. First, there is an express exception in RFPA for disclosure of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder. 12 U.S.C. 3413(d). As discussed above, section 314(a) of the Act requires Treasury to issue regulations to facilitate the exchange of information between financial institutions and the government regarding those engaged in or reasonably suspected of engaging in terrorist activity and money laundering, and the statute gives Treasury the authority to require a response from financial institutions. Accordingly, information required to be reported under the rule would fall under the statutory exception in RFPA for information required to be reported in accordance with a federal statute and its implementing regulations. In order to clarify that RFPA does not inhibit a financial institution from complying with a request from FinCEN under the rule, section 103.100(f) provides that information that a financial institution is required to report under the rule shall be considered to be information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of the statutory exception to the coverage of RFPA in 12 U.S.C. 3413(d).

Second, RFPA applies only to financial records of individuals and to partnerships of five or fewer individuals. Therefore, to the extent an information request under the rule relates to entities and organizations that are not partnerships of five or fewer individuals, RFPA does not apply.

Third, RFPA provides that it does not preclude a financial institution from notifying the government of the name or other identifying information

concerning any individual, corporation, or account involved in a possible violation of any statute or regulation and the nature of any suspected illegal act. 12 U.S.C. 3403(c). As discussed above, the rule requires only the disclosure of the identity of the concerned individual or entity, and an identification of the account or the type of transaction involved (such as a wire transfer), for which a financial institution has a match with FinCEN's request. In addition, because the disclosure would relate to individuals and entities engaged in or suspected of engaging in terrorist activity or money laundering, the disclosure would relate to a possible violation of statue or regulation.

Fourth, section 358 of the Act amended RFPA to expressly provide that its disclosure restrictions do not apply to requests from ''a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to international terrorism.'' 12 U.S.C. 3414(a)(1)(C). Therefore, to the extent that a request for information made under the rule is made on behalf of such an agency, RFPA's disclosure restrictions do not apply. As discussed above, only federal law enforcement agencies investigating terrorist activities or money laundering are authorized to submit a request to financial institutions through FinCEN. For those inquiries relating to terrorism, the new exception plainly applies. In addition, FinCEN itself is an agency authorized to conduct intelligence and counterintelligence analyses related to international terrorism.

As discussed above, section 314 of the Act and the rule authorize new mechanisms to encourage information sharing among the federal government and financial institutions, in addition to those authorized by other laws. Section 103.100(g) clarifies that nothing in the rule affects the authority of a federal agency or officer to obtain information directly from a financial institution.

Section 103.100(h) is intended to preserve the confidentiality of law enforcement investigations by prohibiting a financial institution from using information provided by FinCEN for any purpose other than responding to the information request or deciding whether to establish or maintain an account or to engage in a transaction. It also prohibits the disclosure of the fact that FinCEN has requested or obtained information under the rule, except to the extent necessary to comply with the request. Although nothing in this provision would preclude a financial institution from contracting with a third party to search its records on its behalf, Treasury and FinCEN expect that such a contract would include confidentiality and nondisclosure requirements consistent with this provision. In addition, this provision does not preclude a financial institution (as defined in section 103.110(a)(2)) from sharing information received from FinCEN with other such financial institutions in a manner consistent with applicable laws and regulations.

Section 103.110—Voluntary Information Sharing Among Financial Institutions

As with section 314(a), the Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(b). Unlike section 314(a), which involves responding to requests for information from federal law enforcement agencies, section 314(b) involves the sharing of information among financial institutions and presents different issues concerning information privacy.[5] For these reasons, Treasury and FinCEN believe that it is appropriate to define the term ''financial institution'' for purposes of section 314(b) in a manner that is most likely to further the identification of terrorist and money laundering activities while minimizing the likelihood that information sharing will inappropriately intrude on the privacy interests of the customers of those institutions. Accordingly, section 103.110(a)(2) defines ''financial institution'' for purposes of section 314(b) to mean (1) a financial institution that is subject to SAR reporting that is not a money services business, which includes banks, savings associations, and credit unions; (2) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); (3) an issuer of traveler's checks or money orders; (4) a registered money transmitter, or (5) an operator of a credit card system that is not a money services business. Treasury and FinCEN specifically request comment concerning whether these entities should be included within the definition for purposes of section 314(b) of the Act and regulation section 103.110, and whether the definition should be expanded to include other categories of BSA financial institutions.

Section 103.110(a)(3) defines the term ''association of financial institutions'' to mean a group or organization comprised of financial institutions defined in section 103.110(a)(2). Because associations of such financial institutions can enhance the sharing of information among their members, the rule permits such associations to participate in the information sharing process.

Section 103.110(b) provides that upon providing the appropriate certification to Treasury, as described below, a financial institution may share information with other financial institutions regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve money laundering or terrorist activity.

Prior to engaging in information sharing, a financial institution or association of financial institutions must submit to FinCEN a certification described in new Appendix B to 31 CFR part 103, that confirms: the name of the financial institution or association of financial institutions; that the financial institution is a financial institution as defined in section 103.110(a), or in the case of an association, that the association's members that intend to engage in information sharing are financial institutions as defined in section 103.110(a); that the institution or association will maintain adequate procedures to protect the security and confidentiality of such information; that the institution or association will not use any shared information for any purpose other than as authorized in section 103.110; and the identity of a contact person at the financial institution or association for matters pertaining to information sharing.

To streamline the certification process, FinCEN has established a special page on its existing Internet website, *http://www.treas.gov/fincen*, where financial institutions can enter the appropriate information. If a financial institution or association does not have access to the Internet, the certification may be mailed to FinCEN at the address specified in the rule.

By requiring notice to Treasury before information is shared among financial institutions, Congress has injected Treasury into what would otherwise be a purely private communication. The statute did not indicate clearly whether prior notice to Treasury was required before each individual communication or whether a general notice would be sufficient. After considering both the need for flexibility for financial institutions as well as the need to ensure that the right to share

[5] *See* Act sections 314(b) and (c), which provide protections from federal and State prohibitions on the disclosure of information to financial institutions that engage in information sharing consistent with the requirements of section 314(b) and its implementing regulations.

information under this section is not being used improperly, Treasury and FinCEN determined that the certification should be effective for a one-year period beginning on the date of the certification. A re-certification, provided to FinCEN in the same manner, is required if a financial institution or association intends to continue to share information. An annual certification will help Treasury determine which financial institutions are sharing information, and it will reinforce the need for financial institutions to protect information shared under this section. Treasury and FinCEN balanced the minimal burden associated with completing the brief electronic or paper certification against its role in protecting the privacy interests of customers of financial institutions.

Section 103.110(c) requires each financial institution or association of financial institutions that engages in the sharing of information to maintain adequate procedures to protect the security and confidentiality of such information. This section also provides that information received by a financial institution or association of financial institutions pursuant to this section shall only be used for identifying and reporting on activities that may involve terrorist or money laundering activities, or determining whether to close or maintain an account, or to engage in a transaction. A financial institution that fails to comply with these restrictions on the use of shared information may have its certification revoked or suspended. *See* 103.110(g).

Section 103.110(d) provides that a financial institution or association of financial institutions that engages in the sharing of information and that complies with sections 103.110(b) and (c) shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is the subject of such sharing.

Section 103.110(e) provides a means for financial institutions to voluntarily report information to law enforcement concerning suspicious transactions that may relate to money laundering or terrorist activity that may come to the financial institution's attention as a result of discussions with other financial institutions, or otherwise. In order to accord the highest priority to suspected terrorist activity, a financial institution should report such information to FinCEN by calling the Financial Institutions Hotline (1–866–556–3974). The purpose of the Financial Institutions Hotline is to facilitate the immediate transmittal of this information to law enforcement. Financial institutions identifying other suspicious transactions should report such transactions by promptly filing a SAR in accordance with applicable regulations, even if they provide information over the Financial Institutions Hotline. The Financial Institutions Hotline is intended to provide to law enforcement and other authorized recipients of SAR information the essence of the suspicious activity in an expedited fashion. Use of the Financial Institutions Hotline is voluntary and does not affect an institution's responsibility to file a SAR in accordance with applicable regulations.

Section 103.110(f) clarifies that voluntary reporting under section 103.110 does not relieve a financial institution from any obligation it may have to file a Suspicious Activity Report pursuant to a regulatory requirement, or to otherwise directly contact a federal agency concerning individuals, entities, or organizations suspected of engaging in money laundering or terrorist activities.

Section 103.110(g) provides that a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution under this section if the regulator or FinCEN determines that the financial institution has failed to comply with the requirements of paragraph (c). Treasury and FinCEN believe this provision is necessary to preclude further participation in information sharing under the authority of section 103.110 by a financial information that fails to accord confidentiality to shared information, or uses that information for purposes other than as permitted by section 103.110(c). A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under this section during the period of such revocation or suspension.

IV. Submission of Comments

An original and four copies of any comments (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any comment, including the name of any person submitting the comment, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities. With respect to section 103.100, most financial institutions subject to SAR reporting are larger businesses. Moreover, the burden imposed by the requirement that financial institutions search their records for accounts for, or transactions with, individuals, entities, or organizations engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist activity, is not expected to be significant. Section 103.110 is entirely voluntary on the part of financial institutions and no financial institution is required to share information with other financial institutions. Accordingly, the analysis requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Paperwork Reduction Act

The requirement in section 103.100(d)(2), concerning reports by financial institutions in response to a request from FinCEN on behalf of a federal law enforcement agency, is not a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.4.

The requirement in section 103.110(b)(2), concerning notification to FinCEN that a financial institution that intends to engage in information sharing, and the accompanying certification in Appendix B to 31 CFR part 103, do not constitute a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.3(h)(1).

The collection of information contained in section 103.110(e), concerning voluntary reports to the federal government as a result of information sharing among financial institutions, will necessarily involve the reporting of a subset of information currently contained in a Suspicious Activity Report (SAR). SAR reporting has been previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned OMB Control No. 1506–0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Dated: February 26, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Proposed Amendments to the Regulations

For the reasons set forth above, FinCEN proposes to amend 31 CFR part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Add new subpart H to part 103 to read as follows:

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

Sec.

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity described in 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

§ 103.100 Information sharing with federal law enforcement agencies.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply; and

(2) The term *financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(b) *Requests for information relating to money laundering or terrorist activities.* On behalf of a federal law enforcement agency investigating money laundering or terrorist activity, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(c) *Certification requirement.* Prior to FinCEN requesting information pursuant to paragraph (b) of this section, the federal law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe, that each individual, entity, or organization about which the agency is seeking information is engaged in, or reasonably suspected based on credible evidence of engaging in, money laundering or terrorist activity.

(d) *Reporting by financial institutions.*—(1) *Record search required.* Upon receiving a request from FinCEN, a financial institution shall search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. The search shall cover the time period specified in FinCEN's request.

(2) *Report to FinCEN required.*—(i) *In general.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report the information specified in paragraph (d)(2)(ii) of this section to FinCEN as soon as possible via e-mail to *patriot@fincen.treas.gov* or, if the financial institution does not have access to e-mail, by calling the toll-free the Financial Institutions Hotline (1–866–556–3974), or by such other means as FinCEN may specify in the request.

(ii) *Information required to be reported.* A financial institution shall report the following information to FinCEN:

(A) *Account.* If the financial institution identifies one or more accounts identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN:

(*1*) The identity of such individual, entity, or organization;

(*2*) The number of each such account; and

(*3*) All identifying information provided by the account holder in connection with the establishment of each such account (such as Social Security number, taxpayer identification number, passport number, date of birth, and address).

(B) *Transaction.* If the financial institution identifies one or more transactions (not involving an account) identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN:

(*1*) The identity of such individual, entity, or organization;

(*2*) The date and type of each such transaction; and

(*3*) All identifying information provided by such individual, entity, or organization in connection with each such transaction (such as Social Security number, taxpayer identification number, passport number, date of birth, and address).

(3) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization.

(e) *Designation of contact person.* FinCEN may request a financial institution to identify one person to receive requests for information from FinCEN pursuant to paragraph (b) of this section. When requested by FinCEN, a financial institution shall provide to FinCEN the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, and such other information as FinCEN may request, in such manner as FinCEN shall specify.

(f) *Relation to the Right to Financial Privacy Act.* The information that a financial institution is required to report pursuant to paragraph (d) of this section shall be considered to be information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of section 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)).

(g) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a federal agency or officer to obtain information directly from a financial institution.

(h) *Use, disclosure, and security of information request.* (1) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(i) Reporting to FinCEN as provided in this section; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(2)(i) A financial institution shall not disclose to any person, other than FinCEN or the federal law enforcement agency on whose behalf FinCEN is requesting information, the fact that FinCEN has requested or obtained information under this subpart H, except to the extent necessary to comply with such an information request.

(ii) Notwithstanding paragraph (h)(2)(i) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section.

(3) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section.

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply;

(2) The term *financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2) that:

(i) Is subject to a suspicious activity reporting requirement of subpart B of this part and is not a money services business, as defined in § 103.11(uu);

(ii) Is a broker or dealer in securities, as defined in § 103.11(f);

(iii) Is an issuer of traveler's checks or money orders, as defined in § 103.11(uu)(3);

(iv) Is a money transmitter, as defined in § 103.11(uu)(5), and is required to register as such pursuant to § 103.41; or

(v) Is an operator of a credit card system and is not a money services business, as defined in § 103.11(uu); and

(3) The term *association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Information sharing among financial institutions.*—(1) *In general.* Subject to paragraphs (b)(2) and (g) of this section, a financial institution or an association of financial institutions may engage in the sharing of information with any other financial institution (as defined in paragraph (a)(2) of this section) or association of financial institutions (as defined in paragraph (a)(3) of this section) regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve possible money laundering or terrorist activities.

(2) *Notice requirement.*—(i) *Certification.* A financial institution or association of financial institutions that intends to engage in the sharing of information as described in paragraph (b)(1) of this section shall submit to FinCEN a certification described in Appendix B of this part.

(ii) *Address.* Completed certifications may be submitted to FinCEN:

(A) By accessing FinCEN's Internet website, *http://www.treas.gov/fincen*, and entering the appropriate information as directed; or

(B) If a financial institution does not have Internet access, by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

(iii) *One year duration of certification.* Each certification provided pursuant to paragraph (b)(2)(i) of this section shall be effective for the one year period beginning on the date of the certification. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new certification.

(c) *Security and confidentiality of information.*—(1) *Procedures required.* Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information.

(2) *Use of information.* Information received by a financial institution or association of financial institutions pursuant to this section shall not be used for any purpose other than:

(i) Detecting, identifying and reporting on activities that may involve terrorist or money laundering activities; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(d) *Safe harbor from certain liability.*—(1) *In general.* A financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing.

(2) *Limitation.* Paragraph (d)(1) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraph (b) or (c) of this section.

(e) *Information sharing between financial institutions and the federal government.*—(1) *Terrorist activity.* If, as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in terrorist activity, such information should be reported to FinCEN:

(i) By calling the toll-free Financial Institutions Hotline (1–866–556–3974); and

(ii) If appropriate, by filing a Suspicious Activity Report pursuant to subpart B of this part or other applicable regulations.

(2) *Money laundering.* If as a result of information sharing pursuant to of this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in money laundering, such information should generally be reported by filing a Suspicious Activity Report in accordance with subpart B of this part or other applicable regulations. If circumstances indicate a need for the expedited reporting of this information, a financial institution may use the Financial Institutions Hotline (1–866–556–3974).

(f) *No limitation on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise directly contact a federal agency concerning individuals or entities suspected of engaging in money laundering or terrorist activities.

(g) *Revocation or suspension of certification.*—(1) *Authority of federal regulator or FinCEN.* Notwithstanding any other provision of this section, a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution pursuant to paragraph (b)(2) of this section if the concerned federal regulator or FinCEN, as appropriate, determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Nothing in this paragraph (g)(1) shall be construed to affect the authority of any federal regulator with respect to any financial institution.

(2) *Effect of revocation or suspension.* A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under the authority of this section during the period of such revocation or suspension.

3. The Appendix to part 103 is redesignated as Appendix A to part 103 and the heading is revised to read as follows:

Appendix A to Part 103—Administrative Rulings

* * * * *

4. Appendix B is added to part 103 to read as follows:

Appendix B to Part 103—Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

BILLING CODE 4810–02–P

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____
_____
_____
_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____

TITLE: _____

MAILING ADDRESS: _____

_____

_____

E-MAIL ADDRESS: _____

TELEPHONE NUMBER: _____

FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

Executed on this _____ day of _____, 200____.

[FR Doc. 02–5007 Filed 3–1–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA26, 1506–AA27

Financial Crimes Enforcement Network; Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, a bureau of the Treasury Department, is proposing regulations to implement provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 that encourage information sharing among financial institutions and federal government law enforcement agencies to identify, prevent, and deter money laundering and terrorist activity.

DATES: Written comments on all aspects of the proposed rule must be received on or before April 3, 2002.

ADDRESSES: Written comments should be submitted to: Special Information Sharing—Section 314 Comments, PO Box 1618, Vienna, VA 22183–1618. Comments may also be submitted by electronic mail to the following Internet address: regcomments@fincen.treas.gov with the caption in the body of the text, ''Attention: Proposed Rule—Special Information Sharing—Section 314.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Judith R. Starr, Chief Counsel (FinCEN), (703) 905–3590; William Langford, Senior Counsel for Financial Crimes, Office of the Assistant General Counsel (Enforcement), (202) 622–1932; or Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622–1976 (not toll-free numbers). Financial institutions with questions about their coverage or compliance obligations under this rule should contact their appropriate federal regulator.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001 (Public Law 107–56) (the Act). Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with developing regulations to implement these information-sharing provisions.

Section 314(a) of the Act requires regulations encouraging cooperation between financial institutions and the federal government through the exchange of information regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities. Section 314(b), on the other hand, permits financial institutions, upon providing notice to Treasury, to share information with one another in order to better identify and report to the federal government concerning activities that may involve money laundering or terrorist activities.

First, utilizing the existing and future communication resources of the Financial Crimes Enforcement Network (FinCEN), this proposed rule seeks to create a communication network linking federal law enforcement with the financial industry so that vital information relating to suspected terrorists and money launderers can be exchanged quickly and without compromising pending investigations. FinCEN, a bureau of Treasury, already maintains a government-wide data access service to assist federal, state, and local law enforcement agencies in the detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes. Under the proposed rule, federal law enforcement will have the ability to locate accounts of, and transactions conducted by, suspected terrorists or money launderers by providing their names and identifying information to FinCEN, which will then communicate that information to financial institutions so that a check of accounts and transactions can be made. If matches are found, law enforcement can then follow up with the financial institution directly. The rule is intended to formalize and streamline the information sharing and reporting process that the federal government undertook following the attacks of September 11, 2001, by permitting FinCEN to serve as a conduit for information sharing between federal law enforcement agencies and financial institutions.

FinCEN is uniquely positioned to serve as the communication gateway under section 314(a). Indeed, it already provides considerable information relating to financial crimes to the financial community in a variety of ways. It issues Suspicious Activity Report (SAR) Bulletins, which digest information drawn from SARs to illustrate indicia of suspicious activity, and SAR Activity Reviews, which present trends, tips and issues in suspicious activity reporting. FinCEN issues advisories to alert the financial community to specific activities and areas that merit enhanced scrutiny, including countries with lax anti-money laundering controls. In addition, FinCEN provides industry guidance on its website. The financial services industry also makes substantial use of FinCEN's regulatory helpline.

Second, Congress authorized the sharing of information among financial institutions relating to suspected terrorists and money launderers only after providing notice to Treasury, for the purpose of identifying and reporting to the federal government such activities. The notice provision outlined below—a yearly certification to FinCEN that information will be shared and protected from inappropriate disclosure—combined with the requirement that any money laundering or terrorist activities uncovered be reported to FinCEN or other law enforcement, will allow for the sharing of information while protecting the privacy interests of customers of financial institutions. Given the importance of this information sharing provision, Treasury is issuing simultaneously an interim rule implementing section 314(b), which is published elsewhere in this issue of the **Federal Register**. The regulatory text of the interim rule and this proposed rule are identical with respect to section 314(b).

Nothing in this proposed rule affects the existing authority of federal agencies to obtain information directly from financial institutions, as authorized by law or regulation, pursuant to their own established and approved procedures. Moreover, nothing in the proposed rule affects a financial institution's obligation to file a SAR, or its duty to contact directly a federal agency concerning individuals or entities suspected of engaging in terrorist acts or money laundering activities.

II. Analysis of the Proposed Rule

A. General Definitions

Section 103.90—Definitions

As noted above, section 314 authorizes the sharing of information between the federal government and financial institutions, and among financial institutions, for the purpose of identifying possible money laundering or terrorist activities. Although section 314 does not define ''money laundering'' or ''terrorist activity,'' each of these terms has well-established definitions. Accordingly, and consistent with the broad intent underlying section 314, section 103.90(a) defines ''money laundering'' to mean any activity described in section 1956 or 1957 of title 18, United States Code. Similarly, section 103.90(b) defines ''terrorist activity'' to mean an act of domestic terrorism or international terrorism as defined in section 2331 of title 18, United States Code.

B. Information Sharing with Federal Law Enforcement Agencies

Section 103.100—Information Sharing with Federal Law Enforcement Agencies

Under section 314(a) of the Act, Treasury is required to establish procedures to encourage information sharing between financial institutions and federal government authorities concerning accounts and transactions that may be linked to terrorist activity or involve money laundering. Treasury also may require each financial institution to designate persons to serve as contact points to facilitate this information exchange.

Section 103.100 is intended to fulfill Treasury's statutory mandate in section 314(a) in a way that will provide a streamlined method for federal law enforcement agencies to uncover money laundering and terrorist financing while minimizing burdens on financial institutions and intrusions on individual privacy.

The Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(a). Under the Bank Secrecy Act (BSA), which, like section 314(a), is concerned with information reporting to detect and prevent financial crimes, the term ''financial institution'' is defined broadly.[1] The purpose of section 314(a) is to facilitate the exchange of information between federal law enforcement agencies and financial institutions concerning individuals, entities, and organizations that are engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist acts or money laundering activities. Consistent with this purpose, section 103.100(a) defines ''financial institution'' as any financial institution described in 31 U.S.C. 5312(a)(2).

Section 103.100(b) through (d) establish a mechanism for federal law enforcement agencies investigating money laundering and terrorist activity to use FinCEN as a means of exchanging information with financial institutions about suspected terrorists and persons engaged in money laundering.

Section 103.100(b) provides that FinCEN, acting on behalf of a federal law enforcement agency investigating money laundering or terrorist activity, may request any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, specified individuals, entities, or organizations. FinCEN and the federal law enforcement agency seeking the information will determine the appropriate time period for the records search, depending on the circumstances of the underlying investigation, which will be communicated to financial institutions by FinCEN with the request. Treasury and FinCEN specifically solicit comments from financial institutions concerning the length of time they maintain and/or archive records concerning closed accounts and past transactions, and their ability to access these records for purposes of this section.

Section 103.100(c) makes clear that the federal law enforcement agency for which FinCEN makes the request is responsible for determining that the request meets the statutory requirement that it relate to individuals, entities, or organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist or money laundering activities. Section 103.100(c) requires the requesting federal law enforcement agency to provide FinCEN with a written certification, in such manner and form as FinCEN may prescribe, that each individual, entity, or organization about which the agency is seeking information is engaged in, or reasonably suspected based on credible evidence of engaging in, money laundering or terrorist activity. FinCEN believes this certification requirement establishes sufficient accountability in the requesting federal law enforcement agencies to ensure that such agencies use the authority of the rule in the manner contemplated by the statute.

Under the proposed rule, FinCEN has the authority to request information regarding suspected terrorists and money launderers from any financial institution as defined in the BSA notwithstanding that FinCEN has not yet extended BSA regulations to all such financial institutions. While all financial institutions should be on notice that FinCEN may contact them for information after this rules becomes effective, as a practical matter not all financial institutions will receive requests for information. First, because FinCEN does not currently regulate all BSA financial institutions, it does not have contact information effectively to reach large numbers of unregulated financial institutions. The BSA authorizes FinCEN to require financial institutions to file with FinCEN reports of suspicious financial transactions, known as Suspicious Activity Reports (SARs). To date, FinCEN has extended SAR reporting only to a subset of ''financial institutions'' as defined in the BSA. In addition, regulations issued by the federal regulator of certain financial institutions require SAR reporting to FinCEN. Currently, banks, savings associations, credit unions, certain money services businesses (MSBs),[2] and certain registered securities brokers and dealers [3] are required to file SARs. In addition, the Act requires Treasury to extend the SAR reporting requirement to all registered securities brokers and dealers by July 1, 2002.[4] Accordingly, the initial implementation of section 103.100 generally will involve those financial institutions that are subject to SAR reporting. However, other financial institutions may also be requested to provide information to FinCEN on a case-by-case basis. Implementation of section 103.100 will in the future be expanded to include additional

[1] *See* 31 U.S.C. 5312(a)(2). See also section 314(d)(2) of the Act (requiring the Secretary of the Treasury to distribute certain semiannual reports to financial institutions and incorporating the BSA definition of ''financial institution'') and 18 U.S.C. 2339B(g)(2) (criminal penalties for providing support or resources to foreign terrorists and incorporating by reference the BSA definition of ''financial institution'').

[2] All money services businesses (MSBs) are required to register with the Treasury Department except persons that are MSBs solely because they serve as agents of another MSB; issuers, sellers, and redeemers of stored value; and the U.S. Postal Service. Issuers, sellers, and redeemers of traveler's checks and money orders and money transmitters are subject to the MSB SAR requirement; check cashers and currency dealers and exchangers are not subject to the MSB SAR requirement.

[3] Although FinCEN's existing BSA regulations requiring the filing of SARs do not apply generally to securities brokers and dealers, those securities brokers and dealers that are affiliates or subsidiaries of banks or bank holding companies have been required to report suspicious transactions by virtue of the application to them of rules issued by the federal bank supervisory agencies.

[4] *See* Act section 356. FinCEN has issued proposed amendments to the BSA regulations to cover all securities brokers and dealers 66 FR 67669 (Dec. 31, 2001).

categories of financial institutions as FinCEN develops an enhanced communication network with the larger financial community. Moreover, Treasury and FinCEN expect that many requests for information will be targeted to specific subsets of financial institutions based on information already known to law enforcement agencies. For example, if a law enforcement agency knows that an individual suspected of financing terrorism operates in a particular geographic area, or utilizes particular types of financial institutions, FinCEN would target its request for information accordingly.

Section 103.100(d) sets forth the obligation of financial institutions to comply with a request from FinCEN. This section provides that upon receiving the request, a financial institution shall search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, any individual, entity, or organization named in FinCEN's request. The financial institution's search must cover accounts maintained and transactions engaged in during the time period specified in the request.

If a financial institution identifies a matching account or transaction, it must report as soon as possible to FinCEN the identity of the relevant individual, entity, or organization, together with an identification of the account or the type of transaction (such as wire transfer), as well as all identifying information (such as date of birth, address, Social Security number, passport number, etc.) provided by the individual, entity, or organization in connection with the transaction or establishment of the account. This information should be sent to FinCEN via e-mail to *patriot@fincen.treas.gov* or, if the financial institution does not have access to e-mail, by calling the toll-free the Financial Institutions Hotline (1–866–556–3974), or as FinCEN may otherwise prescribe in the information request.

Although the records search required by section 103.100(d) is retrospective, Treasury and FinCEN expect that financial institutions will use the information provided by FinCEN to report to FinCEN concerning any named individual, entity, or organization that subsequently establishes an account or engages in a transaction.

Nothing in the rule requires a financial institution to take any action, or to decline to take any action, with respect to an existing account or past transaction with, or to decline to establish a new account for, or to engage in a transaction with, any individual, entity, or organization specified in a request from FinCEN. Indeed, in the interests of law enforcement, the proposed rule prohibits a financial institution from taking any action that could alert an individual, entity or organization that it has been identified by a federal law enforcement agency as engaged in, or suspected of engaging in, terrorist acts, the financing of terrorist acts, or money laundering. Treasury and FinCEN are acutely aware and are highly appreciative of the desire of financial institutions not to knowingly facilitate terrorism or money laundering, and recognize that this desire may at times be in tension with the need not to alert persons that have been identified in a request from FinCEN. If, for example, a financial institution believes that its failure to close an account in connection with an individual, entity, or organization named in a request from FinCEN could facilitate terrorism or money laundering, it may be appropriate for the financial institution to advise FinCEN, which will refer the matter to the concerned federal law enforcement agency. Ultimately, however, the decision whether to close an account or decline a transaction is solely that of the concerned financial institution.

Section 314(a) clearly contemplates that information provided by the federal government to financial institutions will be used only for the purposes of that section. Accordingly, the rule also requires financial institutions to maintain adequate procedures to protect the security and confidentiality of information contained in requests from FinCEN. Maintaining the confidentiality of information sent from law enforcement is vital to the success of this information sharing provision and is important to maintaining the privacy interests of the customers of financial institutions.

Section 103.100(e) requires a financial institution, upon a request from FinCEN, to designate one person who will receive requests for information from FinCEN and to provide FinCEN with that person's mailing address, e-mail address, telephone number, and facsimile number. When requested, a financial institution may provide this information through FinCEN's website, *http://www.treas.gov/fincen*, and enter the information as directed, or by sending the information on company letterhead to: FinCEN, PO Box 39, Mail Stop 500, Vienna, VA 22183. A financial institution is not required to provide this information to FinCEN until requested.

Section 103.100(f) clarifies the relationship between a financial institution's obligations under the rule and the Right to Financial Privacy Act (RFPA). RFPA generally provides that ''no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution'' except with the customer's consent or through an administrative or judicial subpoena or a search warrant, or in response to a formal written request. 12 U.S.C. 3402. To obtain access to the records, there must be reason to believe that the records sought are relevant to a legitimate law enforcement inquiry. 12 U.S.C. 3407.

There are several bases on which an information request and a responsive disclosure of information required by the rule are exempt from the requirements of RFPA. First, there is an express exception in RFPA for disclosure of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder. 12 U.S.C. 3413(d). As discussed above, section 314(a) of the Act requires Treasury to issue regulations to facilitate the exchange of information between financial institutions and the government regarding those engaged in or reasonably suspected of engaging in terrorist activity and money laundering, and the statute gives Treasury the authority to require a response from financial institutions. Accordingly, information required to be reported under the rule would fall under the statutory exception in RFPA for information required to be reported in accordance with a federal statute and its implementing regulations. In order to clarify that RFPA does not inhibit a financial institution from complying with a request from FinCEN under the rule, section 103.100(f) provides that information that a financial institution is required to report under the rule shall be considered to be information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of the statutory exception to the coverage of RFPA in 12 U.S.C. 3413(d).

Second, RFPA applies only to financial records of individuals and to partnerships of five or fewer individuals. Therefore, to the extent an information request under the rule relates to entities and organizations that are not partnerships of five or fewer individuals, RFPA does not apply.

Third, RFPA provides that it does not preclude a financial institution from notifying the government of the name or other identifying information

concerning any individual, corporation, or account involved in a possible violation of any statute or regulation and the nature of any suspected illegal act. 12 U.S.C. 3403(c). As discussed above, the rule requires only the disclosure of the identity of the concerned individual or entity, and an identification of the account or the type of transaction involved (such as a wire transfer), for which a financial institution has a match with FinCEN's request. In addition, because the disclosure would relate to individuals and entities engaged in or suspected of engaging in terrorist activity or money laundering, the disclosure would relate to a possible violation of statue or regulation.

Fourth, section 358 of the Act amended RFPA to expressly provide that its disclosure restrictions do not apply to requests from ''a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to international terrorism.'' 12 U.S.C. 3414(a)(1)(C). Therefore, to the extent that a request for information made under the rule is made on behalf of such an agency, RFPA's disclosure restrictions do not apply. As discussed above, only federal law enforcement agencies investigating terrorist activities or money laundering are authorized to submit a request to financial institutions through FinCEN. For those inquiries relating to terrorism, the new exception plainly applies. In addition, FinCEN itself is an agency authorized to conduct intelligence and counterintelligence analyses related to international terrorism.

As discussed above, section 314 of the Act and the rule authorize new mechanisms to encourage information sharing among the federal government and financial institutions, in addition to those authorized by other laws. Section 103.100(g) clarifies that nothing in the rule affects the authority of a federal agency or officer to obtain information directly from a financial institution.

Section 103.100(h) is intended to preserve the confidentiality of law enforcement investigations by prohibiting a financial institution from using information provided by FinCEN for any purpose other than responding to the information request or deciding whether to establish or maintain an account or to engage in a transaction. It also prohibits the disclosure of the fact that FinCEN has requested or obtained information under the rule, except to the extent necessary to comply with the request. Although nothing in this provision would preclude a financial institution from contracting with a third party to search its records on its behalf, Treasury and FinCEN expect that such a contract would include confidentiality and nondisclosure requirements consistent with this provision. In addition, this provision does not preclude a financial institution (as defined in section 103.110(a)(2)) from sharing information received from FinCEN with other such financial institutions in a manner consistent with applicable laws and regulations.

Section 103.110—Voluntary Information Sharing Among Financial Institutions

As with section 314(a), the Act does not define the term ''financial institution'' for purposes of the information sharing provisions of 314(b). Unlike section 314(a), which involves responding to requests for information from federal law enforcement agencies, section 314(b) involves the sharing of information among financial institutions and presents different issues concerning information privacy.[5] For these reasons, Treasury and FinCEN believe that it is appropriate to define the term ''financial institution'' for purposes of section 314(b) in a manner that is most likely to further the identification of terrorist and money laundering activities while minimizing the likelihood that information sharing will inappropriately intrude on the privacy interests of the customers of those institutions. Accordingly, section 103.110(a)(2) defines ''financial institution'' for purposes of section 314(b) to mean (1) a financial institution that is subject to SAR reporting that is not a money services business, which includes banks, savings associations, and credit unions; (2) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); (3) an issuer of traveler's checks or money orders; (4) a registered money transmitter, or (5) an operator of a credit card system that is not a money services business. Treasury and FinCEN specifically request comment concerning whether these entities should be included within the definition for purposes of section 314(b) of the Act and regulation section 103.110, and whether the definition should be expanded to include other categories of BSA financial institutions.

Section 103.110(a)(3) defines the term ''association of financial institutions'' to mean a group or organization comprised of financial institutions defined in section 103.110(a)(2). Because associations of such financial institutions can enhance the sharing of information among their members, the rule permits such associations to participate in the information sharing process.

Section 103.110(b) provides that upon providing the appropriate certification to Treasury, as described below, a financial institution may share information with other financial institutions regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve money laundering or terrorist activity.

Prior to engaging in information sharing, a financial institution or association of financial institutions must submit to FinCEN a certification described in new Appendix B to 31 CFR part 103, that confirms: the name of the financial institution or association of financial institutions; that the financial institution is a financial institution as defined in section 103.110(a), or in the case of an association, that the association's members that intend to engage in information sharing are financial institutions as defined in section 103.110(a); that the institution or association will maintain adequate procedures to protect the security and confidentiality of such information; that the institution or association will not use any shared information for any purpose other than as authorized in section 103.110; and the identity of a contact person at the financial institution or association for matters pertaining to information sharing.

To streamline the certification process, FinCEN has established a special page on its existing Internet website, *http://www.treas.gov/fincen*, where financial institutions can enter the appropriate information. If a financial institution or association does not have access to the Internet, the certification may be mailed to FinCEN at the address specified in the rule.

By requiring notice to Treasury before information is shared among financial institutions, Congress has injected Treasury into what would otherwise be a purely private communication. The statute did not indicate clearly whether prior notice to Treasury was required before each individual communication or whether a general notice would be sufficient. After considering both the need for flexibility for financial institutions as well as the need to ensure that the right to share

[5] *See* Act sections 314(b) and (c), which provide protections from federal and State prohibitions on the disclosure of information to financial institutions that engage in information sharing consistent with the requirements of section 314(b) and its implementing regulations.

information under this section is not being used improperly, Treasury and FinCEN determined that the certification should be effective for a one-year period beginning on the date of the certification. A re-certification, provided to FinCEN in the same manner, is required if a financial institution or association intends to continue to share information. An annual certification will help Treasury determine which financial institutions are sharing information, and it will reinforce the need for financial institutions to protect information shared under this section. Treasury and FinCEN balanced the minimal burden associated with completing the brief electronic or paper certification against its role in protecting the privacy interests of customers of financial institutions.

Section 103.110(c) requires each financial institution or association of financial institutions that engages in the sharing of information to maintain adequate procedures to protect the security and confidentiality of such information. This section also provides that information received by a financial institution or association of financial institutions pursuant to this section shall only be used for identifying and reporting on activities that may involve terrorist or money laundering activities, or determining whether to close or maintain an account, or to engage in a transaction. A financial institution that fails to comply with these restrictions on the use of shared information may have its certification revoked or suspended. *See* 103.110(g).

Section 103.110(d) provides that a financial institution or association of financial institutions that engages in the sharing of information and that complies with sections 103.110(b) and (c) shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is the subject of such sharing.

Section 103.110(e) provides a means for financial institutions to voluntarily report information to law enforcement concerning suspicious transactions that may relate to money laundering or terrorist activity that may come to the financial institution's attention as a result of discussions with other financial institutions, or otherwise. In order to accord the highest priority to suspected terrorist activity, a financial institution should report such information to FinCEN by calling the Financial Institutions Hotline (1–866–556–3974). The purpose of the Financial Institutions Hotline is to facilitate the immediate transmittal of this information to law enforcement. Financial institutions identifying other suspicious transactions should report such transactions by promptly filing a SAR in accordance with applicable regulations, even if they provide information over the Financial Institutions Hotline. The Financial Institutions Hotline is intended to provide to law enforcement and other authorized recipients of SAR information the essence of the suspicious activity in an expedited fashion. Use of the Financial Institutions Hotline is voluntary and does not affect an institution's responsibility to file a SAR in accordance with applicable regulations.

Section 103.110(f) clarifies that voluntary reporting under section 103.110 does not relieve a financial institution from any obligation it may have to file a Suspicious Activity Report pursuant to a regulatory requirement, or to otherwise directly contact a federal agency concerning individuals, entities, or organizations suspected of engaging in money laundering or terrorist activities.

Section 103.110(g) provides that a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution under this section if the regulator or FinCEN determines that the financial institution has failed to comply with the requirements of paragraph (c). Treasury and FinCEN believe this provision is necessary to preclude further participation in information sharing under the authority of section 103.110 by a financial information that fails to accord confidentiality to shared information, or uses that information for purposes other than as permitted by section 103.110(c). A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under this section during the period of such revocation or suspension.

IV. Submission of Comments

An original and four copies of any comments (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any comment, including the name of any person submitting the comment, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities. With respect to section 103.100, most financial institutions subject to SAR reporting are larger businesses. Moreover, the burden imposed by the requirement that financial institutions search their records for accounts for, or transactions with, individuals, entities, or organizations engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist activity, is not expected to be significant. Section 103.110 is entirely voluntary on the part of financial institutions and no financial institution is required to share information with other financial institutions. Accordingly, the analysis requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Paperwork Reduction Act

The requirement in section 103.100(d)(2), concerning reports by financial institutions in response to a request from FinCEN on behalf of a federal law enforcement agency, is not a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.4.

The requirement in section 103.110(b)(2), concerning notification to FinCEN that a financial institution that intends to engage in information sharing, and the accompanying certification in Appendix B to 31 CFR part 103, do not constitute a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.3(h)(1).

The collection of information contained in section 103.110(e), concerning voluntary reports to the federal government as a result of information sharing among financial institutions, will necessarily involve the reporting of a subset of information currently contained in a Suspicious Activity Report (SAR). SAR reporting has been previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned OMB Control No. 1506–0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Dated: February 26, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Proposed Amendments to the Regulations

For the reasons set forth above, FinCEN proposes to amend 31 CFR part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Add new subpart H to part 103 to read as follows:

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

Sec.

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity described in 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

§ 103.100 Information sharing with federal law enforcement agencies.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply; and

(2) The term *financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(b) *Requests for information relating to money laundering or terrorist activities.* On behalf of a federal law enforcement agency investigating money laundering or terrorist activity, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(c) *Certification requirement.* Prior to FinCEN requesting information pursuant to paragraph (b) of this section, the federal law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe, that each individual, entity, or organization about which the agency is seeking information is engaged in, or reasonably suspected based on credible evidence of engaging in, money laundering or terrorist activity.

(d) *Reporting by financial institutions.*—(1) *Record search required.* Upon receiving a request from FinCEN, a financial institution shall search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. The search shall cover the time period specified in FinCEN's request.

(2) *Report to FinCEN required.*—(i) *In general.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report the information specified in paragraph (d)(2)(ii) of this section to FinCEN as soon as possible via e-mail to *patriot@fincen.treas.gov* or, if the financial institution does not have access to e-mail, by calling the toll-free the Financial Institutions Hotline (1–866–556–3974), or by such other means as FinCEN may specify in the request.

(ii) *Information required to be reported.* A financial institution shall report the following information to FinCEN:

(A) *Account.* If the financial institution identifies one or more accounts identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN:

(*1*) The identity of such individual, entity, or organization;

(*2*) The number of each such account; and

(*3*) All identifying information provided by the account holder in connection with the establishment of each such account (such as Social Security number, taxpayer identification number, passport number, date of birth, and address).

(B) *Transaction.* If the financial institution identifies one or more transactions (not involving an account) identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN:

(*1*) The identity of such individual, entity, or organization;

(*2*) The date and type of each such transaction; and

(*3*) All identifying information provided by such individual, entity, or organization in connection with each such transaction (such as Social Security number, taxpayer identification number, passport number, date of birth, and address).

(3) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization.

(e) *Designation of contact person.* FinCEN may request a financial institution to identify one person to receive requests for information from FinCEN pursuant to paragraph (b) of this section. When requested by FinCEN, a financial institution shall provide to FinCEN the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, and such other information as FinCEN may request, in such manner as FinCEN shall specify.

(f) *Relation to the Right to Financial Privacy Act.* The information that a financial institution is required to report pursuant to paragraph (d) of this section shall be considered to be information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of section 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)).

(g) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a federal agency or officer to obtain information directly from a financial institution.

(h) *Use, disclosure, and security of information request.* (1) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(i) Reporting to FinCEN as provided in this section; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(2)(i) A financial institution shall not disclose to any person, other than FinCEN or the federal law enforcement agency on whose behalf FinCEN is requesting information, the fact that FinCEN has requested or obtained information under this subpart H, except to the extent necessary to comply with such an information request.

(ii) Notwithstanding paragraph (h)(2)(i) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section.

(3) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section.

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply;

(2) The term *financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2) that:

(i) Is subject to a suspicious activity reporting requirement of subpart B of this part and is not a money services business, as defined in § 103.11(uu);

(ii) Is a broker or dealer in securities, as defined in § 103.11(f);

(iii) Is an issuer of traveler's checks or money orders, as defined in § 103.11(uu)(3);

(iv) Is a money transmitter, as defined in § 103.11(uu)(5), and is required to register as such pursuant to § 103.41; or

(v) Is an operator of a credit card system and is not a money services business, as defined in § 103.11(uu); and

(3) The term *association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Information sharing among financial institutions.*—(1) *In general.* Subject to paragraphs (b)(2) and (g) of this section, a financial institution or an association of financial institutions may engage in the sharing of information with any other financial institution (as defined in paragraph (a)(2) of this section) or association of financial institutions (as defined in paragraph (a)(3) of this section) regarding individuals, entities, organizations, and countries for purposes of detecting, identifying, or reporting activities that the financial institution or association suspects may involve possible money laundering or terrorist activities.

(2) *Notice requirement.*—(i) *Certification.* A financial institution or association of financial institutions that intends to engage in the sharing of information as described in paragraph (b)(1) of this section shall submit to FinCEN a certification described in Appendix B of this part.

(ii) *Address.* Completed certifications may be submitted to FinCEN:

(A) By accessing FinCEN's Internet website, *http://www.treas.gov/fincen*, and entering the appropriate information as directed; or

(B) If a financial institution does not have Internet access, by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

(iii) *One year duration of certification.* Each certification provided pursuant to paragraph (b)(2)(i) of this section shall be effective for the one year period beginning on the date of the certification. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new certification.

(c) *Security and confidentiality of information.*—(1) *Procedures required.* Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information.

(2) *Use of information.* Information received by a financial institution or association of financial institutions pursuant to this section shall not be used for any purpose other than:

(i) Detecting, identifying and reporting on activities that may involve terrorist or money laundering activities; or

(ii) Determining whether to establish or maintain an account, or to engage in a transaction.

(d) *Safe harbor from certain liability.*—(1) *In general.* A financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall not be liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing.

(2) *Limitation.* Paragraph (d)(1) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraph (b) or (c) of this section.

(e) *Information sharing between financial institutions and the federal government.*—(1) *Terrorist activity.* If, as a result of information sharing pursuant to this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in terrorist activity, such information should be reported to FinCEN:

(i) By calling the toll-free Financial Institutions Hotline (1–866–556–3974); and

(ii) If appropriate, by filing a Suspicious Activity Report pursuant to subpart B of this part or other applicable regulations.

(2) *Money laundering.* If as a result of information sharing pursuant to of this section, a financial institution suspects that an individual, entity, or organization is involved in, or may be involved in money laundering, such information should generally be reported by filing a Suspicious Activity Report in accordance with subpart B of this part or other applicable regulations. If circumstances indicate a need for the expedited reporting of this information, a financial institution may use the Financial Institutions Hotline (1–866–556–3974).

(f) *No limitation on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise directly contact a federal agency concerning individuals or entities suspected of engaging in money laundering or terrorist activities.

(g) *Revocation or suspension of certification.*—(1) *Authority of federal regulator or FinCEN.* Notwithstanding any other provision of this section, a federal regulator of a financial institution, or FinCEN in the case of a financial institution that does not have a federal regulator, may revoke or suspend a certification provided by a financial institution pursuant to paragraph (b)(2) of this section if the concerned federal regulator or FinCEN, as appropriate, determines that the financial institution has failed to comply with the requirements of paragraph (c) of this section. Nothing in this paragraph (g)(1) shall be construed to affect the authority of any federal regulator with respect to any financial institution.

(2) *Effect of revocation or suspension.* A financial institution with respect to which a certification has been revoked or suspended may not engage in information sharing under the authority of this section during the period of such revocation or suspension.

3. The Appendix to part 103 is redesignated as Appendix A to part 103 and the heading is revised to read as follows:

Appendix A to Part 103—Administrative Rulings

* * * * *

4. Appendix B is added to part 103 to read as follows:

Appendix B to Part 103—Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

BILLING CODE 4810–02–P

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____
_____
_____
_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____

TITLE: _____

MAILING ADDRESS: _____

_____

_____

E-MAIL ADDRESS: _____

TELEPHONE NUMBER: _____

FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

Executed on this _____ day of _____, 200____.

[FR Doc. 02–5007 Filed 3–1–02; 8:45 am]
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FEDERAL REGISTER PAGES AND DATE, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 4, 2002

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- Various States; published 1-3-02

Air quality implementation plans; approval and promulgation; various States:
- California; published 1-2-02

FARM CREDIT ADMINISTRATION

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- Loan policies and operations—
  - Loan purchases and sales; definition; published 3-4-02

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  - Advanced digital communications accommodation in 117.975-137 MHz frequency band and flight information services implementation in 136-137 MHz frequency band; published 1-31-02

Radio stations; table of assignments:
- Washington; published 2-4-02

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- Technical amendment; published 3-4-02

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- Victims of severe forms of trafficking in persons; new classification; eligibility for ''T'' status; published 1-31-02

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- USA PATRIOT Act; implementation—
  - Special information sharing procedures to deter money laundering and terrorist activity; published 3-4-02

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Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Pet bird identification; microchip implants; comments due by 3-12-02; published 1-11-02 [FR 02-00740]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Pet birds, performing or theatrical birds, poultry and poultry products; limited ports of entry; comments due by 3-14-02; published 2-12-02 [FR 02-03343]

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  - Financial instruments, comprehensive income, derivatives, and hedging activities; accounting and reporting requirements; comments due by 3-11-02; published 1-8-02 [FR 02-00190]

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- Testing and monitoring provisions; amendments; comments due by 3-12-02; published 1-30-02 [FR 02-02232]

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- California; comments due by 3-14-02; published 2-12-02 [FR 02-03347]
- New Mexico; comments due by 3-11-02; published 2-8-02 [FR 02-03102]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- New Mexico; comments due by 3-11-02; published 2-8-02 [FR 02-03103]

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- Ohio and Kentucky; comments due by 3-14-02; published 2-12-02 [FR 02-03356]

ENVIRONMENTAL PROTECTION AGENCY

Air quality planning purposes; designation of areas:
- Ohio and Kentucky; comments due by 3-14-02; published 2-12-02 [FR 02-03357]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

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- Individuals and households; comments due by 3-11-02; published 1-23-02 [FR 02-01386]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Imported food products of animal origin; drug residue tolerances; comments due by 3-11-02; published 12-7-01 [FR 01-30331]
- Correction; comments due by 3-11-02; published 12-28-01 [FR 01-31877]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Cook's lomatium and large-flowered wooly meadowfoam; comments due by 3-15-02; published 1-14-02 [FR 02-00812]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 82/P.L. 107–143

Recognizing the 91st birthday of Ronald Reagan. (Feb. 14, 2002; 116 Stat. 17)

S. 737/P.L. 107–144

To designate the facility of the United States Postal Service located at 811 South Main Street in Yerington, Nevada, as the ''Joseph E. Dini, Jr. Post Office''. (Feb. 14, 2002; 116 Stat. 18)

S. 970/P.L. 107–145

To designate the facility of the United States Postal Service located at 39 Tremont Street, Paris Hill, Maine, as the ''Horatio King Post Office Building''. (Feb. 14, 2002; 116 Stat. 19)

S. 1026/P.L. 107–146

To designate the United States Post Office located at 60 Third Avenue in Long Branch, New Jersey, as the ''Pat King Post Office Building''. (Feb. 14, 2002; 116 Stat. 20)

Last List Feburary 14, 2002

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4]Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869–044–00002–4)	36.00	[1] Jan. 1, 2001
4	(869–044–00003–2)	9.00	Jan. 1, 2001
5 Parts:			
1–699	(869–044–00004–1)	53.00	Jan. 1, 2001
700–1199	(869–044–00005–9)	44.00	Jan. 1, 2001
1200–End, 6 (6 Reserved)	(869–044–00006–7)	55.00	Jan. 1, 2001
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–044–00008–3)	45.00	Jan. 1, 2001
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–044–00010–5)	56.00	Jan. 1, 2001
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–044–00012–1)	53.00	Jan. 1, 2001
700–899	(869–044–00013–0)	50.00	Jan. 1, 2001
900–999	(869–044–00014–8)	54.00	Jan. 1, 2001
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1600–1899	(869–044–00017–2)	57.00	Jan. 1, 2001
1900–1939	(869–044–00018–1)	21.00	[4]Jan. 1, 2001
1940–1949	(869–044–00019–9)	37.00	[4]Jan. 1, 2001
1950–1999	(869–044–00020–2)	45.00	Jan. 1, 2001
2000–End	(869–044–00021–1)	43.00	Jan. 1, 2001
8	(869–044–00022–9)	54.00	Jan. 1, 2001
9 Parts:			
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200–End	(869–044–00024–5)	53.00	Jan. 1, 2001
10 Parts:			
1–50	(869–044–00025–3)	55.00	Jan. 1, 2001
51–199	(869–044–00026–1)	52.00	Jan. 1, 2001
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11	(869–048–00029–1)	34.00	Jan. 1, 2002
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220–299	(869–044–00032–6)	54.00	Jan. 1, 2001
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13	(869–044–00036–9)	45.00	Jan. 1, 2001
14 Parts:			
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140–199	(869–044–00039–3)	26.00	Jan. 1, 2001
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16 Parts:			
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18 Parts:			
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141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
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20 Parts:			
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400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
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21 Parts:			
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300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
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600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
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24 Parts:			
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200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
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1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
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26 Parts:			
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§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
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50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
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500–599	(869–044–00094–6)	12.00	[5]Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
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29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
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1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
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1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
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700–End	(869–044–00111–7)	53.00	July 1, 2001
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200–End	(869–044–00113–6)	56.00	July 1, 2001
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400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
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200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
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300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
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200–299	(869–044–00128–4)	33.00	July 1, 2001
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52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
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200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
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70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
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47 Parts:			
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200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..